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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 20 मई, 1968 तक प्रकाशित किये गये :—

The undermentioned Gazettes of India Extraordinary were published up to the 20th May, 1968 :—

Issue No.	No. and Date	Issued by	Subject
171	S.O. 1684, dated the 13th May, 1968	Ministry of Commerce.	Further amendment to the Imports (Control) Order, 1955.
172	S.O. 1756, dated the 14th May, 1968.	Ministry of Information & Broadcasting.	Approval of the Films specified in the Schedule thereto.
173	S.O. 1757, dated the 14th May, 1968.	Ministry of Food, Agriculture, Community Development and Co-operation.	Order made by the Central Govt. regarding Essential Commodities Act, 1955.
174	S.O. 1758, dated the 18th May, 1968.	Ministry of Commerce.	Amendment in the Order of the Govt. of India in the Ministry of Commerce [S.O. No. 1844 of 18th June, 1966.
	एस० ओ० 1759, दिनांक 18 मई, 1968.	वाणिज्य मंत्रालय	भारत सरकार के वाणिज्य मंत्रालय के एस० ओ० संख्या 1844 दिनांक 18 जून 1968 के आदेश में संशोधन।

Issue No.	No. and Date	Issued by	Subject
175	S.O. 1750 dated the 20th May, 1968.	Ministry of Information and Broadcasting	Approval of Films specified in the Schedule thereto.
176	S.O. 1751, dated the 20th May, 1968.	Election Commission of India.	Some addition in the Notification No. 56/67-II of 26th September, 1967.
177	S.O. 1762/15/IDRA/68, dated the 20th May, 1968.	Ministry of Industrial Development and Company Affairs.	Appointment of a Committee by the Central Govt. to investigate of Cotton Textiles manufactured by some industrial undertakings.
178	S.O. 1763 dated the 20th May, 1968.	Election Commission of India.	Notice published by the Election Commission of India for general information.

ऊपर लिखे असाधारण राजपत्रों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जाएंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिएं।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION OF INDIA

New Delhi, the 17th May 1968

S.O. 1863.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 29th January, 1968 by the High Court of Gujarat at Ahmedabad in Election Petition No. 1 of 1967.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ELECTION PETITION NO. 1 OF 1967

WITH

RECRIMINATORY STATEMENT NO. 3 OF 1967

Dated 29th January, 1968

District: Banaskantha.

Shri G. G. Mehta, residing at House No. 1/1652, Radhanpuri Building, Kirti Stambh, Palanpur.—*Petitioner.*

Vs.

1. Shri Manubhai Amarsey, residing at Green Fields, 134, Backway Reclamation, Bombay-1.

2. Shri Jivrajbhai Kesarbhai Desai, C/o. Dhanabhai Hirabhai, Khatana, Sihori, Taluka Kankrej.—*Respondents.*

N. K. Vakil.

Mr. C. T. Daru for the Petitioner, Mr. I. M. Nanavaty with Mr. P. M. Raval for Respondent No. 1. Respondent No. 2 served, absent.

ORAL JUDGMENT: CORAM: N. K. VAKIL J.

(29-1-1968)

The petitioner has challenged the election of the first respondent in the last general election held on 18th February, 1967 as a member of the Lok Sabha from the Banaskantha Parlimentary Constituency on the ground that the result of the election insofar as it concerned the first respondent—the returned candidate, had been materially affected by the improper reception of votes and or improper rejection of votes on account of all or any of the facts alleged in para 9 of the petition. The petitioner was one of the candidates representing the Congress Party. Respondent No. 1, was the candidate of the Swatantra Party. The third candidate was respondent No. 2 an independent and he secured only 14265 votes while the petitioner secured 105621 votes and the first respondent had secured 110028 votes. Thus the difference was of 4407 votes. It is the case of the petitioner that but for the improper reception or rejection of votes as stated in the petition, the petitioner would have been eligible to be declared elected. The petitioner, further avers in his petition that the total votes cast at the said election from the said constituency were more than 2,40,000 out of which 14966 votes were rejected. The petitioner had made an application for a recount before the Returning Officer on February 23, 1967 on various grounds. The said application was, however, rejected by the Returning Officer on the ground that the petitioner had not been able to substantiate his allegations by giving particulars. It is alleged that the petitioner had in fact secured a larger number of votes polled but on account of improper reception of invalid votes and improper rejection of valid votes, the result showed that respondent No. 1 had secured 4407 more votes than the petitioner. It was also alleged that the result of the election had been materially affected in so far as it concerned respondent No. 1 in as much as the Assistant Returning Officers at Palanpur, Radhanpur and Dhanera failed to exclude from the place fixed for counting, of votes, all person except those covered by clauses (a) to (d) of Rule 53 of the Conduct of Election Rules and allowed outsiders not concerned with the election to move freely in the counting hall and also as many counting agents did not stick to their allotted tables but wandered from place to place. I may mention at this stage that this ground was not pressed before me nor any evidence led to substantiate this allegation. It is also alleged in the petition that the Returning Officer rejected the application for recount illegally, improperly and in contravention of Rule 63 of the Rules and that the result of the election in so for as it concerned respondent No. 1 was materially affected by the rejection of the said application. This point was also not pressed before me and it has not been shown how the application was rejected in contravention of Rule 63. The prayer in the petition is that the election of the first respondent be set aside and declared void and also that the petitioner be declared elected as a member of the Lok Sabha.

The second respondent though served has not appeared at all. The first respondent who put in his written statement contended the petition on various grounds. In the light of the ultimate stand taken by the learned counsel for the petitioner which I shall state hereafter, I do not find it necessary to mention in detail the contents of the written statement filed. But generally speaking it was contended that the allegations in the petition were vague and did not give particulars of votes improperly accepted or rejected as requird by section 83 of the Representation of People Act, 1951 (hereafter referred to as 'the Act'). Having regard to the statutory restrictions about the secrecy of the ballot papers prescribed by sections 94 and 128(1) of the Act and having regard to insistence upon the secrecy of the ballot papers, the Court should not give relief asked for in para 13 of the petition. It was further contended that the petition did not contain an adequate statement of the material facts on which the petitioner relies in support of his case and as such the said relief cannot be granted to support vague pleas made in the petition. It is further submitted that under the circumstances, the petition should be dismissed in *limine*. The various allegations in para 9(1) of the petition have been denied in details. It is also denied that on account of improper reception of invalid votes and improper rejection of votes the result showed that respondent No. 1 had secured 4407 more votes than the petitioner it was also denied that but for the improper reception and rejection of votes, the petitioner would have been eligible to be declared elected. Over and above filing this written statement, the returned candidate has also filed the recriminatory statement No. 3 of 1967. For disposing of the matter, however, it is not necessary to refer to it in details. Suffice it to say that the first respondent claim that on a proper scrutiny of votes secured by the petitioner and the invalid votes the returned candidate should be found to have secured more votes than the petitioner.

Issues were framed by my learned brother Divan J. who was then in charge of the petition. They are as follows:—

"(1) Whether the first respondent proves that full particulars as contemplated by section 83(1) of the Representation of the People Act have not been given in the petition: whether the petition in so far as it related to the reliefs asked for in para 13 is not maintainable?

(2) Whether respondent No. 1 proves that the allegations in support of the reliefs sought for in the petition are vague? Whether any relief can be granted to the petitioner on such allegations?

(3) Whether the petitioner proves that there was any improper reception or refusal or rejection of any vote or the reception of any vote which was void and whether the result of the election in so far as it concerned the first respondent has been materially affected thereby?

(4) Whether the first respondent proves that there was any improper reception or refusal or rejection of any vote or reception of any vote which was void and whether the result of the election in so far as it concerned the petitioner would have been materially affected thereby if the petitioner had been the returned candidate?"

I gave my finding on issue No. 1 by a separate order rejecting the contentions raised by the respondent No. 1 and have held that the petition is maintainable. As regards issue No. 2 also I have already given my finding that the allegations in support of relief sought for in the petition are not vague. The only main issue now remaining for decision is issue No. 3. In order to enable him to substantiate this issue, the petitioner gave an application on the 16th January 1968 praying that he be permitted to lead evidence in support of the application for inspection and to permit the petitioner to take inspection of all ballot papers from the Vav, Radhanpur and Dhanera sectors of Parliamentary constituency, produced by the Returning Officer before this Court. This prayer if granted necessarily implies as a necessary corollary an order for recount and on this aspect the parties agreed that the granting of the order of inspection would amount to an order of recount.

When the application for inspection was presented by the petitioner on behalf of the first respondent an application his learned advocate Mr. Nanavaty opposed the application and submitted that the application must be rejected in *limine* as the petition did not contain the concise statement of material facts as laid down by the Supreme Court in A.I.R. 1964 S.C. 1249 (Ram Sewak. V. H. K. Kidwai) I have for reasons stated by me in the order, made on the 17th January 1968 rejected that contention and permitted the petitioner to lead evidence for satisfying the Court *prima facie* that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers and a recount is necessary which is the second condition to be fulfilled before an order for inspection and a recount could be made as laid down by the Supreme Court in the above referred decision and subsequently reaffirmed by the decision in A.I.R. 1966 Supreme Court, 773 (Jagat Singh *V.* Kartar Singh). After the said order was passed, the petitioner led evidence. He examined in support of his allegations two of his counting agents one in Radhanpur sector and another in Vav sector. It may be mentioned that though in the petition the allegations of improprieties alleged were in respect of the seven sectors of the Parliamentary Constituency mentioned in para 5 of the petition where the counting was done in the said constituency, the petitioner while leading evidence made it clear that he confined his allegations only to three sectors namely Radhanpur, Vav and Dhanera and did not want to press his case in respect of counting done in the other four sectors. Over and above examining the above two counting agents, the petitioner also examined the Assistant Returning Officers who will be referred to hereafter for brivity's case as 'A.R.Os' of Radhanpur, Vav and Dhanera sectors in support of his case for inspection and recount. The petitioner has neither examined himself, nor led evidence any other counting agent or his or any other witness. I shall deal with this evidence later at the proper stage to the extent required. The first respondent has not led any evidence.

It would be convenient at this stage to note that in each of the seven sectors where counting was done, there were six or seven tables in the counting hall for the counting of ballot papers of the Parliamentary Constituency and an equal number of tables in a separate row for the counting of ballot papers of the Assembly Constituency. We are not concerned with the later. On each of the said counting tables there were one Counting Supervisor and two counting assistants. Each of the candidate had a right to appoint one counting agent of his to

remain present at the table where the counting was made. The—procedure adopted was that when the ballot papers were taken out of the ballot boxes and brought to each of the counting tables, the counting supervisor and the counting assistants sorted out the ballot papers which were clearly validly marked in favour of the respective candidates and they were placed in separate respective trays for each of the candidate and those ballot papers about which there arose any doubt as regards their validity, as per the directions given by the Returning Officer (who shall be referred for brivity's sake as 'E.O.') hereafter, such ballot papers were placed in a separate tray. Then the ballot papers which were assigned to each of the candidates as valid votes, were tied in bundles of fifty each. The doubtful ballot papers were tied in a separate bundle. When this was done, entries were made in a form provided called ballot-paper account. All those bundles together with that ballot paper account were carried to the table where the A.R.O. set on a dais. With him set two other counting agents of the petitioner and the first respondent. The second respondent had not appointed any counting agent. It may be mentioned here that under section 22(2) of the Act, every A.R.O. is subject to the control of the R.O. competent to perform all or any of the functions of the Returning Officer. Section 23 provides that reference in the Act to the R.O. shall unless the context otherwise requires, be deemed to include A.R.O. performing any—function which he is authorised to perform under sub-section (2) of section 22. Under clause (j) of Rule 2 of the Conduct of Election Rules, 1961 (hereafter referred to as the Rules), the phrase "Returning Officer includes any Assistant Returning Officer performing any function he is authorised to perform under sub-section (2) of section 22. Therefore, in the present case, the three A.R.O., performed their function of the R.O. To proceed with the procedure that was followed when the bundles of the ballot papers sorted out as valid votes and the doubtful votes, were brought to the table of the A.R.O. he had scrutinised the doubtful ballot papers taking them up one by one, heard objections if any, of the respective counting agents of the parties and took his decision as to whether the vote was valid or required to be rejected as invalid and further as to in whose favour the vote should be taken to have been given. The decision of the A.R.O. when the ballot paper was rejected was stamped at the back of the ballot paper with instruments provided to them and on which instrument the reasons inabbreviated were engraved on the stamping part of it on which the ballot papers could be rejected as invalid and he put his initials after stamping. These are all undisputed facts. Thereafter the A.R.O. tested the bundles of ballot papers which were separated by the counting supervisor and his assistants as valid votes by holding the bundle in one hand and applying the thumb on one end of the bundle and flicking through the ballot papers. It may be mentioned here that a lot of controversy between the parties centres round this stage and the process of testing adopted by the A.R.Os. I shall deal with it in details at the proper stage. After this was done, the A.R.Os entered in the ballot paper account in form No. 20 the final figures of valid votes secured by each of the candidates and the votes that were rejected as invalid. Now I shall proceed with the submissions made on behalf of the petitioner by his learned Advocate Mr. C. T. Daru.

At the very outset Mr. Daru submitted that the evidence was led only to establish a *prima facie* case and not to prove to the hilt facts alleged. So the approach should be as to whether it is very probable or not that the counting had gone wrong to some extent and to do complete justice between the parties inspection and recount be given. About this proposition, there could be no quarrel.

Mr. Daru then urged that broadly speaking the petitioner had alleged two grounds in support of his case, (i) improper reception of votes and (ii) improper rejection of votes. He first dealt with improper reception of votes. It was submitted that the counting supervisors and the counted were not empowered either by the Act or by the Rules to take any decisions as regards the validity or in validity of any ballot papers namely votes which can be properly received as valid votes in favour of one or the other candidate and votes which ought to be rejected as invalid. These supervisors and the counting assistants were only appointed to assist the R.O. in the ministerial act of counting of votes or tying of bundles or some such act which did not require any discretion to be used in respect of the validity or invalidity of the ballot papers. In the words of Mr. Daru, they had no authority to put the final seal on the character of the ballot papers which could be done only by the R.O. or the A.R.O. as the case may be. The authority to decide whether a particular vote was valid and should be received in favour of any candidate or a particular vote was invalid and should be rejected was entirely the province of the A.R.O. Mr. Daru further urged that this being the law, the counting agents of the candidates where the counting was done by the counting

supervisors and the counting assistants, need not even take any objections because under law these persons had no authority to decide such objections. Therefore, the fact as to whether the counting agents had taken any objections or not or whether the objections were correctly decided one way or the other, cannot have any bearing on the question on hand. For this submission Mr. Daru relied on Rule 56(2) of the Rules. Mr. Daru's argument was that this provision of law requires that it is the R.O. who shall reject any ballot paper if any of the defects stated there is found to be present and this is a duty cast on the R.O. or the A.R.O. as the case may be. In order to be certain in discharge of his duty to see that no vote which ought to have been rejected has wrongly crept in the bundle of votes which admittedly were sorted out as valid in favour of each of the candidates and tied in bundles of 50 ballot papers each, the A.R.O. himself must look carefully each of the ballot papers so separated as valid votes by the counting supervisors on each of the tables. Argued Mr. Daru that the three A.R.Os. who exercised the power of the R.O. and who had been examined by him have said that they have not untied the bundles of valid votes but had merely flicted through those ballot papers. According to him this process cannot enable the A.R Os. to carefully examine each and every ballot paper tied in those bundles to arrive at the decision whether any of them suffered from any of the infirmities mentioned in sub-rule (3) of Rule 56. So apart from anything else and what the counting agents of the petitioner may have said on the evidence of the A.R.Os. themselves, there is a great probability that some votes have been improperly received as valid votes and evidence of the A.R.Os. establish, a *prima facie* case for granting the inspection and as corollary for the recounting. In order to emphasise his submission Mr. Daru pointed out that in each of the centres about thirty thousand votes were cast. Therefore roughly speaking there would be about six hundred bundles each containing fifty ballot papers which were to be put aside as valid votes would be there and in examining all these bundles even if it is assumed that all the bundles were examined as stated by the A.R.Os. by flicking process, there is a preponderance of probability that some of the ballot papers were not even seen by the A.R.Os. much less had they the opportunity of scrutinising those ballot papers to decide whether they did or did not suffer from one or the other defects mentioned in Rule 56(2). It was further contended that having regard to the evidence of the A.R.Os. themselves, it was not possible to accept the version of the A.R.Os. that they had even applied the flicking process to all the bundles. I may here only mention that though some effort was made by one of the counting agents of the petitioner to support this version, he had to concede at the end of his cross-examination that the A.R.O. had tested all the bundles by flicking process. But Mr. Daru all the same submitted that even if it is assumed that they did flick through all the bundles, the examination can only be extremely cursory and at least some of the bundles of ballot papers must escape notice in each of the bundles and even if only three or four ballot papers escape notice in each bundle and which may require rejection as invalid votes, the total number would be large enough to establish that if invalid votes have been received in such numbers as would materially affect the result of the election in so far as the returned candidate was concerned. This, in his submission, was quite sufficient to entitle the petitioner to inspection and recount.

Mr. Daru's submission as regards the improper rejection of votes by the A.R.Os. from the bundles of doubtful votes was two fold. Firstly he urged that two practising advocates who were the counting-agents of the petitioner have deposed that they had raised a number of objections when the doubtful ballot papers were scrutinised by the A.R.Os. and in their opinion, a large number of them were wrongly rejected by the respective A.R.Os. Mr. Daru submitted that the version of these two practising advocates should be preferred to that of the A.R.Os. who were, according to him, after all persons interested in seeing that their action is justified and upheld. This would show that there was a probability that some votes were wrongly rejected or received even out of the doubtful votes. Secondly it was urged that about fifteen thousand votes were rejected by the A.R.Os. as invalid. When such a large number of votes were rejected, there was always the possibility of error of judgment on the part of the A.R.Os. apart from any other factor and that would justify the granting of inspection and recount particularly in view of the narrow margin of only 4407 votes by which the first respondent had succeeded in defeating the petitioner.

Mr. Nanavaty on behalf of the first respondent in reply to the submission as regards the rejected votes by the A R.Os. pointed out that the petitioner had confined his case to the counting of only three sectors, while the figure of fifteen thousand rejected votes mentioned by Mr. Daru was in respect of the seven sectors of the parliamentary constituency. He pointed out that in the three relevant sectors the number of votes rejected was only 5999. The difference of votes between the petitioner and the respondent No. 1 was 4407 and the evidence does not establish

and it is impossible to hold that out of 5909 rejected votes, due to the error of judgment ,the number of votes rejected were proportionately so large as would be likely to affect the difference between the votes secured by the petitioner and those by the first respondent to such an extent that it would entitle the petitioner to inspection and recount. Here I may mention that Mr. Daru conceded that he did not want to urge or suggest that the A.R.Os. had not acted impartially. He further conceded that if the matter only rested on the rejected votes, the difference would not be such as to have such effect on the question on hand. But if the contention raised by him regarding illegal reception were accepted then this contention in respect of the rejected votes will have some bearing. It may further be mentioned that Mr. Daru did not ultimately insist on the weighing of the evidence of his two counting agents as against that of the A.R.Os I may as well observe that if I were called upon to do so, I would not have—relied upon their evidence for good reasons which in the light of the confession made by Mr. Daru and the conclusion I have reached regarding the votes received as valid, I do not think it necessary to give at this stage and shall only refer to them if required for the purpose of any other submission of Mr. Daru.

I will now return to the submission on behalf of the first respondent in respect of the case made out by the petitioner with regard to the allegations of improper reception of votes. It was argued that the submission made on behalf of the petitioner completely ignored the very relevant and important provisions of section 64 of the Act. The section 64 entitles the R.O. to have the counting of votes made under their supervision and direction which means that this provision of law does not compel the R.O. to do the counting himself and can have the counting done by the assistans, namely the counting supervisors and the counting assistants under the supervision and according to the directions that they may give for the purpose. As it would be expedient and advisable that when the counting is got done by the R.O. under his supervision and direction, directions be uniform to avoid confusion and—inconsistency where thousands of R.Os. and A.R.Os. would be conducting the counting of votes all over the country. It is with this view that the Election Commission had standardised the directions to be given by the R.Os. which are to be found in the 'Hand-Book for Returning Officers' at page 83. Mr. Nanavaty pointed out that it is in evidence that these instructions were given in writing to the counting supervisors and the counting assistants by the R.Os before the date of counting and further that the A.R.Os had in the beginning drawn the attention of these persons to the fact of importance of secrecy of ballot and also drawn generally their attention again to these instructions. This was done before the counting was begun. It was further urged by Mr. Nanavaty that the expression "counting" did not mean only the physical act of counting the number of ballot papers but it included in its ambit the function of scrutinising the ballot papers, separating them as valid ballot papers in favour of respective candidates, tying them into bundles, separating doubtful votes from the other votes and after the objections are decided in respect of the doubtful votes, to finally count out the number of void votes secured by each of the candidate and the number of rejected votes. It may be mentioned that as regards the meaning given to the expression "counting" Mr. Daru did not demur. It was then urged by Mr. Nanavaty that han section 64 stood by itself all the different phases of counting including even the function of sorting, scrutiny of votes, receiving the votes as valid votes in favour of respective candidates and even rejecting of votes as invalid, could be done by the assistants of the R.O. under his supervision and direction. But then under section 169 power is given to the Central Government to make Rules for scrutiny and counting of votes. Under this authority the Central Government has framed rules in Part V of the Conduct of Elections Rules and Rule 56 has a bearing on the question. First Mr. Nanavaty submitted that by Rule 56(2) the Legislative—authority has only laid down that out of the several phases or processes of counting the act of rejection of votes shall be done by the R.O. himself and will not have it done by his assistants under his supervision and direction. But he emphasised on the fact that sub-rule (1) of Rule 56 read with section 64 however leaves it open to the R.O. to have the ballot papers not only taken out of the ballot boxes arranged in convenient bundles but also to have them scrutinised under his supervision and direction. Scrutiny, argued Mr. Nanavaty, means carefully examining the ballot-papers with the object of seeing whether they were valid ballot papers or not. Sub-Rule (1) therefore authorises the R.O. to have under his supervision and direction, valid ballot papers scrutinised separated and tied in convenient bundles. The effect of reading Rule 56, sub-rule (1) and sub-rule (2) with section 64 is that the rule does not debar the separation after scrutiny of valid ballot papers by counting supervisors and the counting assistants under the supervision and direction of the R.O. only when any vote is required to be rejected on any of the grounds prescribed, it is only then that the R.O. himself has to do that work

and he cannot have it done merely under his supervision and direction. It was further argued that sub-rule (2) of Rule 56 when read with section 64 cannot be interpreted to cast a duty on the R.O. but it only amounts to a power vested with a fetter thereon. It means that only when the act of rejecting of voting papers was done, the R.O.'s power to have the counting done under his supervision and direction was fettered and enjoined him to do it himself but for all other acts including the act of receiving the ballot papers as valid, he could have it done under his authority under section 64 read with Rule 56(1). He further pointed out that even when the R.O. directs the different stages of counting, there is no delegation of his part to carry out any duties laid on him. He is always present there and it is only under his direction that he gets the scrutiny carried out. When the work of acceptance of votes which are valid is done under his direction, there is no impropriety and if we turn to the instructions to be given to the assistants it can be seen that they contain such directions as to when the ballot papers should be considered to be doubtful and that such ballot paper be separated and no decision be reached by them and only the rest of the ballot papers about which not the slightest doubt arises be separated as valid votes. Mr. Nanavaty urged that if Rule 56 were to be interpreted as urged on behalf of the petitioner, it would be *ultra vires* as it goes beyond the provision of the statute under section 64 and render a part of it ineffective.

Alternatively it was argued on behalf of the first respondent that there was no evidence whatever of any improper reception of votes at the counting tables by the counting supervisors. There is no evidence that any voting papers were objected to on any of the grounds prescribed and that they were wrongly rejected. Apart from that, even if the interpretation tried to be placed on Rule 56(2) on behalf of the petitioner, were to be accepted, in the present case the evidence discloses that even the voting papers which were set apart as valid votes were as a matter of fact examined by the respective A.R.Os. It was argued that the method of flicking through adopted did give the A.R.O. the opportunity of an effective checking to see that no invalid vote had crept in or any vote in favour of a particular candidate was wrongly tied up in the bundle of votes of another candidate. He submitted that the evidence of the A.R.Os. should be believed and the evidence of the counting agents of the petitioner should not be accepted when they try to suggest even that this test was done hurriedly as to give the A.R.O. no opportunity to see each and every ballot paper. He further urged that the stress laid on behalf of the petitioner on the timings given by the A.R.Os. for applying this test to each bundle was given very approximately and no argument could be built on it. He further pointed out that as a matter of fact a bundle of fifty such ballot papers could be gone through even with care within seconds and there is nothing so improbable in the evidence of the A.R.Os. about this process of checking as to come to the conclusion that the A.R.Os had not applied their mind in respect of votes that were received as valid votes. He ultimately submitted that the petitioner had not made out any case either for inspection or recount and as the petition was now tried to be supported only on this ground and if the inspection and recount is disallowed, the petition should be dismissed with costs.

I have deemed it expedient to refer to the submissions and arguments in support thereof made by the learned counsel for both the sides at some length and in details. The question raised is of great importance and the reasoning on the point advanced on neither side can be put aside as of no substance or merit. As a matter of fact I have found some difficulty even in arriving at the conclusion on the legal aspect but for the reasons that I shall set out hereafter in my view the submissions made on behalf of the first respondent should be accepted in preference to those made on behalf of the petitioner.

The submissions made before me raise two points for determination, one of law and the other of fact and they are (i) whether under law the R.O. or the A.R.O. as the case may be is himself required to examine each and every ballot paper to decide the validity of ballot papers for the reception of votes as also the invalidity thereof for rejection of votes; (ii) if so, whether in fact the three respective A.R.Os. can be said to have complied with the requirement of law so as to exclude the probability of invalid votes having been received.

Before I discuss the submissions of the parties, it would be convenient to look to the relevant provisions of law. The petitioner seeks to set aside, the election on the ground as given in section 100(1)(d)(iii). It reads as follows:—

"100. Grounds for declaring election to be void:

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) XX XX XX

(b) XX XX XX

(c) XX XX XX

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) XX XX XX XX

(ii) XX XX XX XX

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) XX XX XX

the High Court shall declare the election of the retuned candidate void.

(2) XX XX XX

It is to be noted that this statutory provision contemplates four types of improprieties either of which if proved would result in setting aside the election and they are: (i) improper reception, (ii) improper refusal, (iii) improper rejection and (iv) reception of vote which is void. These are four different concepts or possibilities indicated by the statute itself. Out of these four, petitioner has relied upon only two namely improper reception and improper rejection of votes.

The next important provision which has direct and very emphatic bearing on the question on hand is section 64 which finds its place in Chapter V with the heading "Counting of Votes". The said section is as follows:—

> "64. *Counting of votes.*—At every election where a poll is taken, votes shall be counted by or under the supervision and direction of, the Returning Officer, and each contesting-candidate, his election agent and his counting agents shall have a right to be present at the time of counting".

It is clear on the plain reading of this section that the R.O. is empowered to do all the processes which amount to counting, himself or may have it done under his supervision and direction. The ambit of the expression "counting" is not in dispute. Counting of votes does not merely means physical counting of ballot papers but having regard to the rules under the heading "counting of votes" in part V of the Rules, it clearly includes the various stage or processes necessary to reach the decision as to how many valid votes were secured by the respective candidate and how many votes cast were rejected as invalid votes. So the word "counting" so far as the facts of this case are concerned, includes the phases or stages of taking the ballot papers out of the ballot boxes, sorting them out, scrutinising them and separating them as valid votes when they are clearly validly marked, separating doubtful votes, rejecting of invalid votes and ultimately determining the total number of valid votes secured by the respective candidates and the total number of rejected votes. While I am on this subject of the meaning of "counting" I may as well refer to Rule 53 which deals with 'Admission to the place fixed for counting'. It lays down that the Returning Officer shall exclude from the place fixed for counting of votes all persons except (a) such persons as he may appoint to assist him in the counting. I have referred to this to point out that law permits appointment of assistants to assist the R.O. in the work of counting. Such appointment is in the nature of things necessary because of the provision of section 64 which empowers the R.O. to have the counting done under his supervision and direction. This itself would imply that he shall have the personnel to have the counting done under his supervision and direction. It is true that the exact nomenclatures "counting supervisors" and "counting assistants" are not to be found in the Rules or the Act but there is no doubt that the Act and the Rules do provide for the appointment of assistants to assist the R.O. in the work of counting under his supervision and direction.

Before I go to the next important Rule, I may refer to section 169 which authorises the Central Government after consulting the Election Commission, to make rules for carrying out the purposes of the Act, Sub-section (2) says in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters and clause (g) is as follows:—

"(g) the scrutiny and counting of votes including cases in which a recount of the votes may be before the declaration of the result of the election;"

This means that the Central Government can prescribe rules which so far as section 64 is concerned may provide that in the counting of votes, some phases or some processes may be done by the R.O. personally and not under his supervision or direction. Section 64 provides alternative modes which may be adopted by the R.O. in counting of votes and therefore it would be within the powers of the Central Government to lay down which stages or phases or process of counting he himself shall do and leaving to his discretion to have the rest of the stages or processes to be done under his supervision and direction.

I now turn again to the Rules that have bearing on the subject on hand. Rule 54A deals with counting of votes received by post. It is one such rule which requires everything to be done for the counting of postal ballot papers by the R.O. himself and by implication it prohibits him from doing anything in respect of counting of postal ballots under his supervision or direction. Then comes Rule 56 the provision whereof are made the basis of the controversy between the parties and which do require very careful consideration as regards its scope and effect. Rule 56 reads as follows:— 01

"56. *Counting of votes*:—(1) The ballot papers taken out of each ballot box shall be arranged in convinient bundles and scrutinised.

(2) The Returning Officer shall reject a ballot paper—

(a) if it bears any mark of writing by which the elector can be identified, or

(b) if, to indicate the vote, it bears no mark at all or bears a mark made otherwise than with the instrument supplied for the purpose, or

(c) if votes are given on it in favour of more than one candidate, or

(d) if the mark indicating the vote thereon is placed in such manner and to make it doubtful to which candidate the vote has been given, or

(e) if it is a spurious ballot paper, or

(f) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or

(g) if it bears a serial number, or is of a design, different from the serial numbers, or as the case may be, design of the ballot papers authorised for use at the particular polling station, or,

(h) if it does not bear the mark which it should have borne under the provisions of sub-rule (1) of rule 38;

Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (g) or clause (h) has been caused by any mistake or failure on the part of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect.

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than, once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(3) Before rejecting any ballot paper under sub-rule (2), the returning officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper but shall not allow him to handle it or any other ballot paper.

(4) The returning officer shall endorse on every ballot paper which he rejects the letter 'R' and the grounds of rejection in abbreviated form either in his own hand or by means of a rubber stamp and shall initial such endorsement.

(5) All ballot papers rejected under this rule shall be bundled together.

(6) Every ballot paper which is not rejected under this rule shall be counted as one valid vote;

Provided that no cover containing tendered ballot papers shall be opened and no such paper shall be counted.

(7) After the counting of all ballot papers contained in all the ballot boxes used at a polling station has been completed, the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars."

The important fact to be first noticed is that this rule purports to deal with all the processes or phases of counting right from the time the ballot papers are taken out of each ballot box and after the counting is over, up to the making of the entries in the result sheet in form 20 and announce the particulars. It will now be necessary to examine some of its parts to find out what is provided to be done by the R.O. himself and what is left to his discretion to have done under his supervision and direction.

Sub-rule (1) is very material. It does not provide that the R.O. himself shall do the things mentioned therein. This sub-rule read with section 64 empowers the R.O. not only to have the ballot papers taken out and arranged but also have them scrutinised. Now the scrutiny is to be made with some purpose. To scrutinise is to examine carefully the ballot papers and that must be done with some purpose. The R.O. has then to direct as to for what purpose they shall do the scrutiny and how they should do the scrutiny. If any other part of this rule or any other rule were not to provide to the contrary, all the phases of counting including the rejection of votes could be done under his supervision and direction. Suffice it to note at this stage that this sub-rule does entitle the scrutiny of ballot papers under his supervision and direction. However, when we go to sub-rule (2) of Rule 56, we find a positive provision which provides that the R.O. himself shall do the act or particular process of counting namely the rejection of ballot papers which by necessary implication creates a fetter on his authority given to him under section 64 to have it done under his supervision and direction. The controversy is about the correct construction of this sub-rule. As has been pointed out Mr. Daru's submission is that it casts a definite duty on the R.O. to reject every ballot paper which reveals any of the defects stated therein and therefore each ballot paper has to be scrutinised by the R.O. himself otherwise it was not possible for him to carry out the duty. As against that, on behalf of the first respondent, as we have seen, Mr. Nanavaty argued that sub-rule (2) only creates a fetter on the power of the R.O. vested in him under section 64 in respect of the votes that require to be rejected as invalid and not for the votes which were to be received as valid votes. True it is that if the sub-rule (2) stood by itself, Mr. Daru's contention may prevail because it would more likely than not mean that it casts a duty on the R.O. to reject every ballot paper that suffered from any of the infirmities stated in sub-rule (2) of rule 56 and unless each ballot paper is seen by the R.O., it may not be possible to carry out that duty. But in my view, sub-rule (2) has to be read in context with sub-rule (1) and also section 64. The interpretation placed by Mr. Daru almost makes the two provisions redundent for, as we have seen, sub-rule (1) does leave it open to the R.O. to have the scrutiny made by his assistants under his supervision and direction. If that was not the intention and if everything with regard to the reception or rejection of ballot papers was contemplated to be done only by the R.O. himself, the Legislative authority would not have included in sub-rule (1) the stage or process of scrutiny. In my view in order to make the provision—of section 64 and sub-rule (1) and sub-rule (2) of Rule 56 consistent and effective, the better construction to be placed on sub-rule (2) is—that it only takes in its fold the stage or act of rejection of ballot papers and not the acceptance of ballot papers as valid votes. I will explain how this is the more appropriate or reasonable construction to place. In my view the Legislature having authorised under section 64, the counting being done by the R.O. if he so decided, under his supervision and direction the Central Government under the authority given by section 169 seem to have intended to fetter that power of the R.O. in respect of the important act that affect the right of franchise of the electorate. Having regard to the importance attached in the Constitution of India, to the right of franchise of every citizen entitled to exercise such right, by sub-rule (2) of rule 56 the Legislative authority intends that before a citizen—entitled to exercise his right of franchise is deprived of it by his vote being thrown out on the ground of it being invaild, the more responsible officer the R.O. must himself carefully apply his mind to it. Before a vote is therefore made—ineffective, the Legislative authority intends that the R.O. himself shall exercise his discretion to reject the vote and not merely have it done under his supervision and direction. But so far as the act of reception of votes is concerned, the rule making authority has not given equal importance to it and has left it to be done by the R.O. under his supervision and direction. It would not be unreasonable to believe that having regard to the vast number of ballot papers to be scrutinised, and the elaborate machinery set up under the Rules enabling the candidates and their agents to

watch the process as of scrutiny and counting and also raise objections, the Legislative authority have thought it proper not to give equal importance to the reception of votes as to the rejection of votes and only thought it necessary to fetter the power of the R.O. in respect of rejection of votes as it affects the very important right of franchise of a citizen.

I may examine this question from another angle also, and we imply necessarily from the language of sub-rule (2) of Rule 56 that the Legislative authority intended to cast the duty on the R.O. to go through the various processes or stages of counting himself as a necessary antecedent to the rejection of ballot papers. In my view it cannot be for reasons I shall presently give. The Legislative authority is conscious of the distinction between the effect of the R.O. going through all the processes of counting himself and those processes or phases of counting to be done under his supervision or direction. This is patent on the face of section 64 and further emphasised by the Rules. Wherever the rule making authority wants the R.O. to go through these acts or processes himself, it has so expressly provided for example by rule 54A in respect of counting of votes received by post. Therefore, to the extent it does not expressly provide for the R.O. to do all the processes himself, the Legislative—authority must be taken not to intend to be so. On the contrary, as pointed out, sub-rule (1) or Rule 56 positively indicates it does not. In the absence of such express indication, can it be said that the language compels such an inference that all the processes namely sorting of votes, scrutinising the ballot papers for reception as valid votes and the rejection of ballot papers as invalid be done by the R.O. himself. Can it even be said that it is necessary to make such an inference to give efficacy to sub-rule (2) itself. Once again, in my view, the answer is in the negative. The scheme of the Rules itself treats the process or act of rejection apart from other stages of counting particularly of the scrutiny of ballot papers. The scrutiny of each and every ballot paper is done under the direction and supervision of the R.O. under sub-rule (1) read with section 64. So in law it is as effective as if he himself had done it. Therefore all the processes prior to the stage of rejection of votes in so far as they are done under the supervision and direction of the R.O. as contemplated by section 64, they are validly carried out and there is nothing compelling to carry out those processes all over again by the R.O But when the stage of rejection is reached, the Rule requires that he himself shall do that particular process. If the ballot papers have already been examined with care in accordance with the provisions of law, sub-rule (2) cannot be so interpreted to mean that the R.O. shall himself once again examine all the ballot papers to comply with the provisions of that sub-rule. Sub-rule (2) cannot be so interpreted as to make ineffective what has been effectively done as required by law.

Having regard to the express provision of section 64 read with sub-rule (1), I am inclined to hold that the language of sub-rule (2) cannot be held to impose a duty to examine each and every ballot paper by the R.O. himself In the context of sub-rule (1) read with section 64, the words "The Returning Officer shall reject" are used only to indicate the person who shall perform the function of rejection. Section 64 contemplates two officers who can perform all the functions for counting: the R.O. himself or his assistant under his supervision and direction and sub-rule (2) by using the said phrase only provides that the function of actually rejecting any vote on the ground of infirmities prescribed shall be performed by the R.O. himself. So this language can be interpreted only to mean that it only intends to exclude the assistants and does not cast any duty. The duty to reject is already cast under sub-rule (1) read with section 64 when it provides for scrutiny of ballot papers. By sub-rule (2) only the person who shall perform the duty to reject and on what grounds he shall reject is provided for. sub-rule (3) of Rule 56, lends further support to the view I have taken that the rule making authority has intended to distinguish between the act of reception of a ballot paper as a valid vote and finally rejected a ballot paper as an invalid vote. It provides positively that before any ballot paper is rejected under sub-rule (2) the R.O. shall allow each counting agent present, reasonable opportunity to inspect the ballot paper. Then sub-rule (4) requires the R.O. to endorse on each such ballot paper the reason of rejection and to initial the endorsement. This shows the anxiety of the rule making authority to take all precautions against a vote being wrongly rejected and thus deprive a citizen of his valuable right of franchise. In my view, the scheme of the Act and particularly the rules discloses a greater anxiety on the part of the authorities regarding improper rejection that improper reception of votes and consequently the provision made by sub-rule (2) of rule 56 that when it comes to the stage of rejection of votes, it shall only be done by the R.O. himself.

To emphasise the above discussion, it may be pointed out that as the law contemplates several phases or processes included in counting of votes to be carried

out under the supervision and direction of the R.O. for the sake of uniformity and avoidings of confusion and inconsistent directions to be given by the different R.Os the Election Commission has issued the Hand-Book for Returning Officers. This handbook contains—instructions to the R.Os. as to how he shall exercise his power to have the counting done under his supervision and direction. As pointed out by Mr. Nanavaty, the directions which the R.O. has to give to his assistants are to be found on page 83 of the Book. No doubt, these are merely administrative instructions and they cannot have any effect or control on the provisions of the Act or the Rules, but it may be helpful to have a look at them to know what exactly was directed to be done by the R.O. to his assistants. It is not disputed that such directions were given. Direction No. 6 is as follows:—

"6. Unfold the ballot papers and put each such ballot paper validly marked for a candidate in the compartment place assigned to that candidate and put each of the doubtful ballot papers in the compartment/place marked 'D'."

These clearly shows that the instruction is to scrutinise the ballot papers and separate such of them as are validly marked and separate each of the doubtful ballot papers and put them in place marked 'D'. What is important to be noted is that wherever there is the slightest doubt or when it cannot be said to be validly marked, the assistants have not to receive or reject the vote but they have merely to set apart and put them aside in the place provided for the purpose. Under the circumstances they do not take any decision—thereon and set them apart for being dealt with by the R.O. himself. Then instruction No. 7 provides the grounds to the assistants as to when they will put aside the votes as doubtful. Instruction No. 7 is as follows:—

"7. Put a ballot paper in the place marked 'D' only—

(i) when there is no mark at all, or the mark is made by an instrument other than that provided for the purpose, or

(ii) when the mark is in the blank area, that is to say, at the back or entirely in the shaded area, or

(iii) when there are marks against two or more candidates, or

(iv) when there is any writing or mark by which the voter can be identified, or

(v) when the ballot paper is mutilated beyond recognition, or

(vi) when the ballot paper is not genuine, or

(vii) when the original mark is patently in the column of one candidate, but an impression due to wrong folding appears in the column of another candidate, or

(viii) when there is a clear mark in the column of one candidate, but a smudge appears against that of another candidate.

Do not put any ballot paper in the "doubtful" stack simply because—

(i) more than one mark has been made in the column of one candidate;

(ii) besides a clear in mark in the column of one candidate, there are marks on the back and/or well inside the shaded area (the latter should be ignored); or

(iii) the mark is only partially within the column of one candidate and the rest of the mark is the blank area."

Instruction No. 9 requires the assistants to tie the bundles in lots of 50 each and requires them to arrange the ballot papers in such a manner that the symbols on the ballot papers are all on the same side. It also provides that while counting the ballot papers in the stack of each candidate, to check again that the mark on each paper is—clearly in favour of that candidate. It further requires them to check the total number of ballot papers found in the box with the number of ballot papers which ought to be in the ballot box. Instruction No. 10 requires them to put the ballot paper account on top "D" bundle immediately below, and below that the bundles for candidates 1, 2, 3, and then tie up in one packet and leave the packet with the Returning Officer. Instruction No. 12 also may be noted. It lays down that the assistants shall allow the candidates agents who will be seated in front of them to watch the sorting and counting of the ballot papers and give due consideration to any objection that may be raised by any of them. At this stage, I have only referred to these instructions to have a clear idea as to what the assistans under the directions of the R.O. did while doing the scrutiny of the ballot papers and that while separating the ballot papers

as valid, it can hardly be said to have exercised any discretion but only separated such ballot papers as were patently validly marked. It would show that the counting agents of the candidates would also be there to watch and object. From all this it is reasonable to hold that unless there is evidence to the contrary even if there was any chance of a *bona fide* mistake in putting aside ballot papers as valid, the number cannot be such as to affect the result of the election one way or the other. It is also to be noticed that the R.O. does not disappear from the scene after delegating some of his powers or duties He remains present on the scene of the counting all the time to listen to any complaint of irregularity if any committed by his assistants who did the work under his supervision and direction.

For reasons discussed hereabove, my conclusion on the point of law is that the construction canvassed for by Mr Nanavaty is preferable to the one put by Mr. Daru on sub-rule (2) of Rule 56. As a consequence of that, the action of the R.O. in merely flicking through the ballot papers is only an extra precaution taken to see that no ballot paper which ought to have been rejected has gone in as a valid vote. It is because of this position of law, I believe, that in the instructions given to the R.O. by the Election Commission in the Hand Book for R.Os. by clause (n) of para 17 which contains instructions as regards the "procedure for counting" only provides for making a "test-check" of the bundles of invalid ballot papers to see that they have been correctly sorted and do not contain any ballot paper which ought to be rejected or ought to be placed in the bundle of ballot papers of the other candidate. The instruction to make only a "test-check" is very significant and indicates that it is only provided *ex abundanti cantela*. It appears to me that law does not compel him to even do that and the petitioner cannot claim inspection or recount on that ground.

Mr. Daru, however, drew my attention to the decision of my learned brother Divan J. given by him in Election Petition No 15 of 1967 on the 14/15th of December 1967, in support of the submissions he made He drew my attention particularly to the following observations:—

> "The scheme of the rule 56 is that the decision as to whether a particular vote is valid or invalid, that is whether it shall be counted for a particular candidate or shall be rejected outright or shall be treated as invalid, has to be taken by the Returning Officer himself. For the purposes of the rules the Assistant Returning Officer stands on the same footing as the Returning Officer and, therefore, as the rule stands, the decision whether a particular vote is valid or invalid has to be taken by the Assistant Returing Officer himself if he is in charge of the counting of votes for a particular constituency. As the things have turned out in the instant case, the decision as to whether a particular voting paper should or should not go before the Assistant Returning Officer was already taken at each counting table by the counting supervisor and the counting assistants. It is clear from the evidence of the Assistant Returning Officer Bhatt and of the first respondent that the Assistant Returning Officer has applied his mind only to those bundles of votes which were set apart at each table as doubtful votes. No scrutiny or rechecking of votes which were treated as valid by the counting assistants and the counting supervisors at the different counting tables, has been carried out by the Assistant Returning Officer. The result, therefore, is that though the Assistant Returning Officer has applied his mind to the votes which were put up before him from the different counting tables as doubtful votes he has not applied his mind to the bundles of votes treated as valid votes and as for one or the other candidate by the counting assistants and counting supervisors."

It is true that my learned brother has taken the view that Rule 56 requires the Assistant Returning Officer himself to take a decision as to whether a particular vote is valid or invalid and then on the question of fact of that particular case he came to the conclusion that the decision was not taken by the A.R.O. as he had not applied his mind to the votes which were put up before him from the different counting tables as valid votes. With great respect to the learned Judge, for reasons that I have given hereabove, I am unable to agree with him as regards the interpretation of Rule 56. My attention was also drawn to the following passage:—

"Pausing here for a minute, I may say that so far as the rules are concerned, the counting assistants and counting supervisors are unknown. Those designations are unknown to the Conduct of Election Rules The only reference that can be found is in rule 53. That rule provides for admission on of persons to the place fixed for counting and the rule says that the Returning Officer shall exclude

from the place so fixed all persons except such persons as he may appoint to assist him in the counting. It is under this rule which contemplates the Returning Officer appointing some persons to assist him in counting that the counting assistants and counting supervisors can be appointed by the Returning Officer and they may assist him in the counting. The assistance in the work of counting must be distinguished from assistance in deciding as to which votes shall be treated as votes for one or the other candidate and which votes shall be treated as valid or invalid. The manner in which the counting was carried on at Vaghodia clearly indicates that as regards the bundles of votes which the counting assistants and counting-supervisors at different tables treated as votes for one or the other candidate, the Assistant Returning Officer has not applied his mind at all." As I have observed, it is true that the nomenclature "counting supervisors" and 'Counting assistants' are not to be found but that in my view should make no difference as regards the character of the role—that is to be performed by them. The observation that the assistance in the work of counting must be distinguished from the assistance in deciding as to which votes shall be treated as votes for one—candidate or the other candidate and which votes shall be treated as valid or invalid has been made to support the conclusion reached by the learned Judge that the work of deciding as to which votes shall be treated as votes for one or the other candidate and which votes shall be treated as valid votes must only be decided by the A.R.O. personally. From the judgment however it appears that the attention of the learned Judge was not at all drawn to section 64 of the Act and its impact particularly on sub-rule (1) and sub-rule (2) of Rule 56. I have also shown that the expression 'counting' has a wider meaning and includes the act or process of scrutiny which in its turn would include the work of separation of valid and doubtful votes. In my view, section 64 makes all the difference in approach in determining this question. As pointed out these assistants are entitled to take all decisions under the supervision and direction of the R.O. unless specifically provided to the contrary by the Rules in respect of any one or more of the stages or processes of counting of votes and that under sub-rule (1) of Rule 56, they are entitled to do the scrutiny under the supervision and direction of the A.R.O. For these and other reasons that I have at length given, with due deference I am unable to agree with some of the reasoning and the conclusion reached by the learned Judge on this point and I prefer to take the view, I have taken. But it has also to be noticed that the facts of the case are—materially different on the crucial point and as I shall point out hereafter even if the finding on the position of law of the learned Judge is accepted as correct, in the case with which I am dealing, the petitioner cannot succeed to get inspection. Had I found that this conflict of opinion helped the petitioner to get an order of inspection on the basis of that decision, I would have deemed it my duty to refer the matter to Lord the Chief Justice to do the needful to refer to a Division Bench.

Now I proceed to deal with the question of fact. Assuming that what Mr. Dazu claims to be the legal position is the correct legal position viz., law requires the R.O. to apply his mind to every ballot paper to see whether it requires rejection, the question is whether the evidence in this case would justify an order of inspection and recount. It is obvious that in the case decided by my learned brother counting agents on the counting tables had been examined by the petitioner and there was evidence to show that they had raised objections as regards improperties. So far as the present case is concerned, there is no such evidence. No counting agent from any of the counting tables has been examined. In the said case before the learned Judge it was admitted by the A.R.O. himself that he had not tested all the bundles of valid votes and further more he admitted that he had merely seen the others cursorily. But the returned candidate respondent No. 1 in that case want a step further and admitted that no checking was done at all by the A.R.O. of the bundles which were set apart by the Counting assistants as valid votes. Therefore the fact there established a clear and positive case of no application of mind by the A.R.O. at all and no test whatever was carried out to see that no invalid vote had gone into the bundles which were set apart by the counting supervisors as valid votes in favour of a candidate. But such is not the case so far as the matter on hand is concerned. In the present case, there is no evidence that wrong decisions were given at the different counting tables. Mr. Daru even for the purposes of examination of facts of this case had justifiably not referred to the evidence of the counting agents of the petitioner but had merely relied upon the evidence of the A.R.Os. But his submission had been that having regard to the timing given by the A.R.Os. for the tests that they had applied of flicking through the ballot papers. I should come to the conclusion that it was impossible that they could have applied the test to each and every bundle. As I have already observed, this is contrary even to the evidence of counting agents of the petitioner. The question then only remains as to whether the evidence on the record of this case would justify me coming to the conclusion that the test applied was not good enough to give an opportunity to the A.R.Os. to

apply their mind to the ballot papers in the bundles of votes which were separated as valid votes by the counting supervisors. In order to examine this question, I think it will be proper for me to refer to the evidence of the A.R.Os. on the point.

Witness No. 3 for the petitioner is Dinesh Chandra Solanki. He deposed that the time fixed for beginning of counting of votes was 8-A.M. But unfortunately so far as this witness is concerned the time when the counting was over has not been brought out in his evidence. He has stated in his examination-in-chief that after the ballot papers were taken to the counting tables of the parliamentary constituency, they were sorted out by the counting assistants by separating valid ballot papers in respect of the respective candidates and the doubtful votes. They were supplied with trays in which they had so separated. Whenever the votes were found to be clearly in favour of any of the candidates, they were separated as valid votes in favour of the respective candidates and whenever any votes were found to be not clear or were doubtful, they were put in the tray of doubtful votes. The counting staff had clear instructions that whenever there was slightest doubt as regards any ballot paper as to in whose favour it was or as regards the validity of the ballot paper such ballot papers were to be separated as doubtful votes. Further on as regards the checking that he had done, he has said that he had done the test checking of the bundles of valid votes of the respective candidates. This test checking was done by him by holding the bundle in one hand and applying the thumb at one end of the bundle and flicked through the ballot papers. I may mention that this witness and the other A.R.O. had actually demonstrated the method of test they had adopted. The witness then further stated hat this checking was done in the same way for all the bundles of valid votes of all the polling stations. He said that the test checking was made of valid votes but each ballot paper was not taken out separately for scrutiny but keeping them in a bundle, he had hurriedly looked at them. I had not noticed any discrepancy in such test checks in any of the bundles. Mr. Daru had tried to make a point out of this statement of the witness that he had hurriedly looked at them. But that by itself would not mean that he was not able to run his eye over each and every ballot paper or that he was not in a position to see whether the ballot papers were validly marked or not or he was left in any doubt about it. Because in the cross-examination the witness said that the method which was adopted in test checking of each bundle of valid votes, he had found that test to be satisfactory for the scrutiny of valid votes. When the test check was made by him, his eye had gone over on each and every ballot paper and he could see the marks made on each ballot paper, in the columns of the respective candidates. I have made a note at that place that the witness has demonstrated how he had done the test checks and have remarked that if the test as adopted was done with care, it was possible to see the markings on each of the ballot papers. Now here it may be noted that the witnesses have said and as can be seen also from the instructions to which I have referred to in the Hand-Book for Returning Officers, when the bundles were tied, ballot papers were so arranged that all any symbols were on one side of each of the ballot papers so that when the flicking process was adopted, the symbols and the markings thereon could be easily seen. This witness has further said that by the method of checking adopted, he was in a position to satisfy himself as regards the nature of the mark made. At the end of the cross-examination, at the request of the petitioner's learned Advocate a question was placed by the Court as to how much time did he take in examining each bundle of 50 ballot papers and the witness had answered that he could not be exact but it may have taken about a minute or a minute and a half. As already observed, Mr. Daru wanted to suggest that if each bundle took such a long time to apply the test. it would take the major part of the time that the whole counting has taken and therefore the witnesses should not be believed when they say that they had applied the test checks. I am not inclined to accept this submission on the part of the petitioner. The time given by the witnesses is very approximate. At least so far as this particular witness is concerned, we have no date as to how much time the whole process of counting had taken. Therefore, no argument could be based on this point. Apart from these facts, the witness had also to admit in cross-examination that as a result of the tests that he had applied, at least one vote was found in the bundle of valid votes which required to be rejected. Of course this admission on the part of the witness was tried to be utilised by the counsel of each side in favour of their respective submission made. Mr. Nanavaty urged that the method was effective enough to enable the A.R.Os. to atleast detect one. While Mr. Daru urged that showed that despite all the care that the counting assistants might have taken, an invalid vote had crept in. The Rules provide an elaborate machinery to see that when the counting is done by the counting supervisors, the candidates, and their agents shall have all the

opportunity of stopping any such improprieties occurring. It is true that despite all that, in all human actions, some inadvertant and exceptional mistakes are likely to creep in and I would not generalise that mistakes can never be in such numbers as may materially affect the result of the election so far as it concerns the successful candidate. But particularly having regard to the evidence in this case coupled with the fact of the elaborate machinery provided, I believe in this case the possibility of such mistakes occurring was greatly reduced. Therefore I am inclined to accept Mr. Kanavaty's submission that small as is the margin of error by the method adopted by the A.R.O., the impropriety was detected and therefore it provides the efficacy of the method of test adopted by the A.R.Os., in this particular case.

Witness No. 4 Nandlal Motiram Biglani was the Assistant Returning Officer in Vav sector. He has stated that the counting had started at about 8-30 A.M. and had lasted up to about 4-00 A.M. next early morning. On the question of checking of the valid votes, he has stated in his examination-in-chief that he had checked the bundles of valid votes of their supposed validity. Some of the bundles of valid votes, he had checked by holding each one of them in one hand and applying his thumb on one side of the bundle and flicking the ballot papers. This he had done where he had found that ballot papers were arranged in the bundle in such a way that the symbols were on the right and the names of the candidates were on the left side and they were all facing upward. But so far as he was concerned, he had found some bundles which were not so well arranged. There, without removing the rubber band, he had examined each of the ballot paper separately. Even with regard to the bundles which were well arranged, he has stated that he had not removed the rubber band with which the bundles were tied. Then he has said that the test checking of each bundle of 50 by flicking the ballot papers had taken about half a minute. He did not remember how many bundles were there which were not properly arranged but they may be about 20 per cent Examination of each such bundles had taken about two minutes. As regards the time taken for the application of the test, my observations made in respect of the last witness hold good. In the cross-examination the witness said that he had instructed the counting assistants and the counting supervisors that if there was the slightest doubt as regards the validity of any vote or if any objection was taken by the counting agents of the candidates, then that ballot paper should be put aside as a doubtful vote. He had not received any complaint from any of the counting agents of the parties that instruction had not been followed on any of the counting tables. He had not received any complaint from any of the counting agents from any of the tables that the process of counting was done so hurriedly that there was no proper sorting or counting of votes. He has also said that when he adopted the method of examining the valid ballot papers by flicking through them, he was able to see each ballot paper. He was also able to see that a valid marking was made on each ballot paper. He had not come across any bundle wherein any ballot paper without a valid marking was found. As regards the bundles where the ballot papers were not well arranged, he had bundled each ballot paper with his fingers one by one and had satisfied himself that each ballot paper had a valid mark No objection was taken by any of the counting agents of the candidates against adopting this method and each such bundle was scrutinised by him in one or the other method he has described.

The third A. R O. Bhupatsinh Kubersing Mahida or Dhanera sector has also deposed to the same effect. He has said that as regards the bundles of valid ballot papers, he had adopted the flicking process and he had done so slowly so that he could see each of the ballot papers and see whether thre was marking or not. He gave the timing for such test as about half a minute to one minute. In cross-examination he admitted that in the method that he had adopted for scrutinising valid ballot papers he was able to ascertain whether it was a valid ballot paper or not and in favour of a particular candidate He also stated that he had given instructions to the counting supervisors and counting assistants that any ballot paper about which there was the slightest doubt, must be separated as a doubtful vote and only those which were clearly valid must be separated as valid ballot papers. He had further instructed that if any objection was raised by any of the counting agents of the candidate and if they were able to satisfy, they should put the vote as a doubtful vote. He had not received any complaint that despite objection having been raised by the counting agent, the votes were not separated as doubtful votes and considered as valid votes.

The picture that emanates from this evidence of the A.R.O. is clear. In the first place it shows that the A.R Os. had instructed the counting supervisors and the counting assistants that only the ballot papers which were clearly validly

marked should be set apart as valid votes and if there was the slightest doubt about the validity of any ballot paper or if any objection was raised by any of the counting agents of the candidates, such a ballot paper should be put aside as doubtful vote. The other fact clearly established is that no complaints were received by them from any of the counting tables that these instructions were not followed. As I have already observed, none of the counting agents on any of the counting tables has been examined. The third important thing which is established by the evidence of these witnesses is that the method that they had adopted did give them an opportunity of scrutinising each ballot paper and also to satisfy themselves that the marking had been validly done. As regards the time taken for flicking through the ballot papers, it being only an approximate estimate given by them, cannot be the yard-stick to come to the conclusion that these witnesses were not telling the truth. True it is that they were persons who were interested in seeing that the decisions given by them were upheld but that by itself would not make them unreliable witnesses. There is nothing on the not told the truth before the Court. Neither in the evidence nor in their demeanour there are any factors which would make me discard their evidence on this important point.

The above discussion would show that there is no analogy whatever between the evidence on the crucial point in this case and the case on which Mr. Daru tried to rely. Therefore, even if the submission of Mr. Daru as supported by the said decision is accepted, that the A.R.Os. had to apply their mind to the valid ballot papers also, the evidence in this case clearly establishes that each of the A.R.Os. had applied his mind to the ballot papers that were separated as valid votes to reasonably satisfy himself that no invalid vote had been put in the bundles of valid votes by some mistake or that no vote in favour of a candidate had been wrongly placed in the bundle of votes of another candidate.

It would be proper here to mention that it is necessary to keep in mind the principle laid down by the Supreme Court before an order for granting inspection or recount is made in favour of the petition. In Ram Sewak V. H. K. Kidwai A.I.R 1964 S.C. 1249, it has been observed that it must be remembered that the rules framed under the Representation of the People Act, 1951, set up an elaborate machinery relating to the stage of counting of votes by the returning officer, and provide ample opportunity to the candidate who has contested the election or his agents to remain present and to keep an eye on any improper action which may be taken by the returning officer. Their Lordships have then examined in details the rules and then have observed that there can therefore be no doubt that at every stage in the process of scrutiny and counting votes the candidate or his agents have an opportunity of remaining present at the counting of votes watching the proceedings of the returning officer, inspecting any rejected votes and to demand a recount. Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinised and opened and the votes were counted. He had also opportunity of inspecting rejected ballot papers and of demanding a recount. Then comes the most important observations and that is that it is in the light of the provisions of section 83(1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a recount that the application for inspection must be considered. Similarly in A.I.R. 1966 S.C. 773 (Jagjit Singh v Kartar Singh) it has been observed that in dealing with question of inspection, importance of the secrecy of the ballot papers cannot be ignored and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. Then again their Lordships have observed that it may be that in some cases the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in the considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void. Their Lordships have further observed that whenever an Election Tribunal is called upon to consider this question it should not ignore the safeguards which have been prescribed by the relevant Rules prescribed in part V of the Conduct of Elections Rules 1961. Thereafter again Their Lordships have reviewed the relevant rules and then observed that they had referred broadly to the Scheme of

the rules to emphasise the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted and in case the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is material to note here, as already observed their is no evidence of any counting agents from either of the counting tables, to even *prima facie* show that any impropriety was committed in the reception of votes, as valid votes in favour of respondent No. 1. So far as the doubtful votes are concerned, in the three sectors of the constituency, there is no reliable data provided in evidence led, as to how many doubtful votes were there and how many were wrongfully received as valid votes despite objections. The evidence of the two counting agents of the petitioner who were on the table of the two A.R.Os. at Radhapur and Vav, is not at all satisfactory or reliable and as mentioned here above, Mr. Daru did not make any attempt to place any reliance thereon to substantiate his submission. Having regard to this state of evidence, no *prima facie* case is made out that any votes were improperly received from among the doubtful votes, so as to affect the result of the election so far as it concerns respondent No. 1. Keeping in mind the observations of the Supreme Court in the two decisions and the evidence on record, I am not satisfied even *prima facie* that in order to decide the dispute between the parties and to do complete justice between the parties, inspection of the ballot papers or a recount should be granted I therefore, find issue No. 3 in the negative.

The result is that the petition cannot stand and it is dismissed. In the light of the conclusion that I have reached, the question of substantiating the allegations made in the recriminatory statement does not arise and my finding on issue No. 4 is that it does not survive. There shall be no order as to costs so far as the recriminatory statement is concerned. So far as the petition is concerned, I order that the petitioner shall pay to the first respondent Rs. 1800/- as counsel's fees and over and above that he shall also pay the other taxed costs. In fixing this amount, I have taken into consideration the fact that the hearing of this petition has gone on for six full days before me. The first respondent shall be entitled to recover from the security deposit the amount due to him for costs to the extent of Rs. 2,000/-. If the costs exceed the amount of Rs. 2,000/- the respondent shall take such steps as may be advised to recover the remaining amount of costs.

By the order of the Court
Sd./- M. A. SYED,
Deputy Registrar (I)
27-2-1968.
This 27th day of February 1968.

[No. 82/1/67(GJ).]

New Delhi, the 21st May 1968

S.O. 1864.—In pursuance of sub-section (2) of section 116C of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 26th April, 1968, by the Supreme Court of India in Civil Appeal No. 1788(NCE) of 1967 under section 116A of the Representation of the People Act, 1951 filed against the judgment and order dated the 20th October, 1967 of the Madras High Court in Election Petition No. 10 of 1967.

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 1788/67.

K. T. Kosalram—*Appellant.*

Dr. Santosham and ors.—*Respondents.*

ORDER

The appeal is dismissed for non-prosecution with costs so far incurred to Respondent 1.

(Sd.) J. C. SHAH,
(Sd.) V. BHARGAVA,

NEW DELHI,
26-4-68.

[No. 82/MD/10/67.]

ORDER

New Delhi, the 21st May 1968

S.O. 1865.—Whereas the Election Commission is satisfied that Shri Pran Nath, B-505, New Rajinder Nagar, New Delhi, a contesting candidate for election to the House of the People from Hoshiarpur Parliamentary constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notices has not given any reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Pran Nath to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislature Council of a State for a period of three years from the date of this order.

[No. PB-HP/6/67(4).]

By Order,

K. S. RAJAGOPALAN, Secy.

New Delhi, the 17th May 1968

S.O. 1866.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 31st January, 1968, by the High Court of Judicature at Allahabad, in Election Petition No. 31 of 1967.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

ORIGINAL JURISDICTION

Dated Allahabad the 31st January, 1968.

PRESENT:

The Hon'ble D. S. Mathur,—Judge.

ELECTION PETITION No. 31 OF 1967

Chandra Pal Shailani—*Petitioner.*

Versus.

Sri Nar Deo & others—*Respondents.*

BY THE COURT

ELECTION PETITION No. 31 OF 1967.

Hon, Mathur, J.

This is a petition by Shri Chandra Pal Shailani to challenge the election of Sri Nar Deo, respondent No. 1, from 75-Hathras (SC) Parliamentary constituency in district Aligarh to the Lok Sabha in the General Elections held in January/February, 1967. There is not only the prayer for setting aside the election but also to declare the petitioner to have been duly elected from this constituency.

Considering that no evidence was adduced by the petitioner on various corrupt practices alleged in the election petition, it will serve the purpose if only the material facts are reproduced in this judgment, though the allegations of the corrupt practices shall be briefly indicated to give an idea to which issues those allegations relate to. Six persons, namely Sri Nar Deo, Sri Ganga Sahai, Sri Om Prakash Balmiki and Sri Brij Pal Singh Nimi, respondentns Nos. 1 to 4 Sri Chandra Pal Shailani, petitioner, and one Sri Bhup Singh were duly nominated by Sri Bhup Singh withdrew his candidature by the date fixed for withdrawal. Sri Nar Deo was sponsored by the Indian National Congress and was allotted the symbol of two bullocks with a yoke on. Sri Om Prakash Balmiki and Sri Ganga Sahai were sponsored by the Samyukta Socialist Party and the Bhartiya Jan Sangh and they were allotted the symbols of 'tree' and 'lamp' respectively. Both

the petitioner and Sri Brij Pal Singh Nimi were treated as independent and were allotted the symbols of 'lion' and 'Bicycle' respectively. Both claimed to be the official candidate of the Republican Party of India. In view of this conflict the Returning Officer did not allot the symbol of the Republican Party of India to either of them. Sri Nar Deo received 87947 valid votes, the petitioner 30828, Sri Ganga Sahai 58793, Sri Om Prakash Balmiki 25035 and Sri Brij Pal Singh Nimi 17465 14924 votes were rejected and there were also 41 tendered votes. Sri Nar Deo having secured the maximum number of valid votes was declared elected.

The petitioner's case is that he was sponsored by and had contested the election on the ticket of the Republican Party of India which party was recognised by the Election Commission of India as a multi State party. His case further is that he had made the necessary declaration in his nomination paper and a notice as contemplated by Paragraph 4 of the notification No. S.O. 3367 dated December 1, 1966, issued under Rule 5(1) of the Conduct of Election Rules , 1961, had been duly given. It is said that in the circumstances objections raised should have been disregarded, Sri Brij Pal Singh Nimi should not have been considered as a candidate of the Republican Party of India, and insead, the petitioner should have been held to have been duly sponsored by and allotted by the 'elephant' symbol of the Republican Party of India. The petitioner's case further is that he had from before November, 1966 proclaimed himself to be a prospective candidate for the coming General elections from Hathras (SC) constituency to the Lok Sabha on the party ticket of the Republican Party of India and had started the propaganda with 'elephant' as his symbol. He had so convassed by speeches and by pamphlets, that he would be contesting as a party candidate and the voters should vote for him in view of his past services to the public and his being the official candidate of the Republican Party of India.

The aims and object and the programme of the Republican Party of India are said to be espousal of the cause of the down trodden and suppressed sections of the society, the landless labourers in villages and exploited labourers in the town and in the cities. It is said that the appeal of this party programme to these sections of the society was tremendous. It is also said that "there is a considerable section of the progressive and enlightened elements of the electors who appreciate the economic and social programme of the party and have been supporting it ever since its coming into being." Reference was also made to the candidates of the party or candidates who were supported by the party having been elected in the General Elections of 1962.

The petitioner's case further is that respondent No. 1 exploited the non-allotment of the party's symbol to the petitioner by propagating that he was not the candidate of the Republican Party of India and also spread the news that the Republican Party of India had not chosen to set up a candidate against him. The result was that thousands of voters who were stock voters of the Republican Party of India did not cast their votes for the petitioners and many even though they went to the polling station, left the ballot papers blank. It was further mentioned that had he been allotted the 'elephant' symbol of the Republican Party of India, the votes cast for Sri Brij Pal Singh Nimi, respondent No. 4, would have been by and large cast for him as such were the votes of the Republican Party of India. Both Sri Brij Pal Singh Nimi, and Sri Nar Deo respondent are alleged to have maligned the petitioner by saying that he was found unfit to be the representative of the Republican Party of India and hence was not given the symbol of 'elephant'.

An objection was also raised to the (improper) acceptance of the nomination paper of respondent No. 1, Sri Nar Deo. It is said that he had himself described in his handwriting, in the two nomination papers differently as 'Chhamar' Jatav, and that he was no longer a member of the Scheduled Caste having, at occasions, described himself as Arya and also because he had become an Aryasamajist.

Allegations of corrupt practices committed by respondent No. 1, his agents workers and supporters with his consent were made in the grounds contained in clauses (iii) to (vii) of Paragrahp 11 of the Election Petition. A concise statement of such corrupt practices were given in paragraph 13 of the petition. Schedule I to III were also annexed. As non of these allegations were supported by evidence, the purpose shall be served by briefly indicating the nature of these alleggations. In clause (i) of paragraph 13 it was alleged that respondent No. 1, his agents and workers and supporters with his consent falsely propagated that the petitioner was a Bodh, an enemy of Hinduism and was a Nastik; and that being a Bodh he was an agent of Budhist China. These false statements were calculated to prejudice the prospects of the petitioner's election and by such statements feeling

of enmity and hatred among the Hindus was created by the respondent No. I It was further alleged that respondent No. I described himself as an Aryasamajist and appealed to the people to vote for him as against the petitioner who was a Bodh. Another allegation of corrupt practice made was that respondent No. 1 appealed in the name of cow and asked the voters to vote for him saying that the Budhists like the petitioner did not believe in the sanctity of the cow and were in favour of cow slaughter.

Respondent No. 1, his agents and his workers and supporters with his consent were also alleged to have hired, procured and used motor vehicles for free conveyance of the voters to and from the polling station. Respondent No. 1 was further alleged to have incurred very heavy expenditure at the election.

Vague allegations with regard to the counting and acceptance or rejection of ballot Papers was also made in paragraph 16 of the election petition. In view of the vague nature of these allegations no issues were framed nor has any evidence come on record.

Respondent No. 1 Sri Nar Deo, alone contested the proceeding. He has denied all the allegations made against him. He denies to have made the propaganda as suggested by the petitioner. His case further is that the Returning Officer had not acted illegally by not allotting the 'elephant' symbol of the Republican Party of India to the petitioner.

The following issues were framed:—

1. Was the symbol of the Republican Party of India wrongly not allotted to the petitioner? If so, has the result of the election been materially affected?
2. Was respondent No. 1 a member of the Scheduled Caste? Was his nomination paper wrongly accepted by the Returning Officer?
3. Did respondent No. 1 his agents and his workers and supporters with his consent make the false propaganda detailed in clause (i) of Para 13 of the petition knowing that such statement were false?
4. Did respondent No. 1 appeal to the voters on the ground of religion and also in the name of the cow by making utterances detailed in the second part of clause (i) of paragraph 13 of the election petition?
5. Are the allegations in para 13(i) of the petition vague, lacking in material particulars? If so, its effect?
6. Do the allegations in para 13(i) amount to corrupt practice?
7. Did respondent No. 1, his agents and his workers and supporters with his consent, hire, procure and use motor vehicles and other conveyances for free conveyance of the voters to and from the polling station? Does it amount to a corrupt practice?
8. Are the allegations with regard to this corrupt practice vague, lacking in material particulars? If so, its effect.
9. Did respondent No. 1 spend in the election an amount in excess of the prescribed limits?
10. Should the allegation contained in para 13(iii) be disregarded on the ground of its being vague and lacking in material particulars?
11. Has the result of the election been materially affected?
12. To what relief is the petitioner entitled?

Findings

Issues 3 to 10.—Pertain to the allegations of corrupt practices raised in grounds (iii) to (vii) of paragraph 11 of the Election Petition and detailed in para 13 of the petition. They were apparently given up during the trial. No evidence was adduced on these allegations and these issues must, therefore, be decided against the petitioner by holding that none of these allegations of corrupt practices having been established.

Issue No. 2.—Sri K. L. Grover, Advocate for the petitioner, made a statement before the framing of the issues that Sri Nar Deo, respondent No. 1, was a member of the Scheduled Caste but after become an Aryasamajist he ceased to be a member of the Scheduled Caste In view of this statement the only point in issue is whether a member of the Scheduled Caste ceases to be such a member after he has become an Aryasamajist. Nothing has been brought to my notice

which can suggest that a person ceases to be a member of the Scheduled Caste on becoming an Aryasamajist. Aryasamajists are like Sanatan Dharmists and also like members of the Scheduled Caste, Hindus by religion. Consequently an Aryasamajist continues to be a member of the Scheduled Caste after following the tenents of Aryasamaj. Respondent No 1 was, therefore, entitled to stand for election from the present reserved constituency and his nomination paper was rightly accepted by the Returning Officer. The issue is decided against the petitioner.

Issues Nos. 1 *and* 11.—Two points that arise are (1) was the 'elephant' symbol of the Republican Party of India wrongly not allotted to the petitioner, and (2) if the result of the election has been materially affected by the non-allotment of the symbol, that is, non-compliance of the rules.

It was in connection with the non-allotment of the symbol that it was alleged in clauses (xxix) and (xxxiii) of paragraph 12 of the Election Petition that respondent No 1 had exploited the nor-allotment of the party's symbol by propagating that the petitioner was not a candidate of the Republican Party of India which had decided not to set up a candidate against respondent No. 1, and that respondents Nos. 1 and 4 maligned the petitioner by stating that he was found unfit to be the representative of the party ard was not given the symbol of the party. In case the Election Petition is strictly construed these allegations can be regarded as instances of how the result of the election had been materially affected by the non-allotment of the symbol, and not as instances of corrupt practice committed by respondent No. 1, his agents or his workers and supporters with his consent. Even if they could be regarded as instances of corrupt practices, oral evidence adduced on the point is unsatisfactory. As already mentioned above, these allegations were also denied by respondent No. 1.

The first and the most important question which arises in this proceeding is whether a candidate sponsored by a multi State party can, as a matter of right, claim that the usual symbol of the party be allotted to him; or the Returning Officer has the discretion to allot or not to allot that symbol to the candidate? If the provisions of the notification referred to above are mandatory in the sense that the symbol of the multi State party must be allotted to the candidate of the party the non-allotment shall amount to non-compliance of the rules. But if it is, discretionary with the Returning Officer to allot or not to allot that symbol, there shall be no non-compliance of the rules though in extra-ordinary circumstances the order of the Returning Officer may be regarded illegal on the ground of its being arbitrary and hence unconstitutional.

Even though in this proceeding we are concerned with the interpretation of all the provisions of the above notification No. S.O. 3367 dated 1st December, 1966, it shall be proper to point out difficulties that may arise in giving effect to the notification so that the Election Commission may, if it considers necesssary, modify the instructions and thus save the Returning Officers from the dilemma in which they may otherwise be placed.

The notification consists of four paragraphs and a table containing for each State or Union Territory free symbols, reserved symbols and the party for which the symbol is reserved. The notification has been issued under Rule 5(1) of the Conduct of Election Rules, 1961, which empowers the Election Commission to specify, by notification in the Gazette of India and in the official gazette of each State, the symbol that may be chosen by the candidates at elections in Parliamentary or Assembly constituencies and the restrictions to which their choice shall be subject to.

Paragraph 1 of the notification defines three terms, 'recognised party', 'multi State party' and 'reserved symbol'. 'Recognised party' means any political party for which a symbol is reserved in one or more States according to the table appended to the notification. Consequently, a political party recognised for one State is as much a 'recognised party' as a political party recognised for many States or more than one State. However, the term 'multi State party' has not been given any general meaning. The names of the parties recognised as such have been given in the definition. After the amendment of the notification on 14th December, 1966 there are now eight recognised parties placed in the category of 'multi State party'. The Republican Party of India is one of the eight multi State parties.

Even though eight parties have been recognised as multi State parties no symbol has been reserved for them for all the States, though by virtue of certain words existing in the second proviso to paragraph 2 of the notification it can be

said that each 'multi State party' has a reserved symbol of its own. The term 'reserved symbol' has been defined in clause (c) of paragraph 1 with reference to the table annexed to the notification. 'Reserved symbol' means, in relating to any recognised party specified in column 4 of the table, the symbol specified against that party in column 3 thereof. A symbol is thus, in the eye of law, reserved for the party only for the State for which it is recognised as a 'recognised party' but not for all the States. It cannot consequently be said that there is necessarily a reserved symbol for each multi State party. Even though no multi State party can legally claim a symbol to be its reserved symbol, it can be virtue of the words the reserved symbol of that party' existing in the second proviso to paragraph 2 of the notification assert that the symbol reserved for the party in certain States is its reserved symbol for all Sates. Such an assertion, though not in conformity with the definition of the term 'reserved symbol', could be accepted by virtue of the second proviso to paragraph 2 of the notification. But this view cannot be adopted after the amendment of the definition of the 'multi State party' under notification No. S.O. 3872 dated 14th December, 1966 whereunder the Republican Party of India was accepted as the eight multi State party. Apparently, to enforce the effect of the second proviso to paragraph 2 of the notification the Election Commission had originally prepared the table in such a manner that a symbol reserved for a multi State party in one or more States, in which it was recognised as a recognised party', was not in any State allotted to other recognised parties, nor was it placed among free symbols. Consequently, upto 14th December, 1966 a multi State party could, in good faith, at least from a practical point of view, claim the symbol reserved for it in certain States as its reserved symbol for all the States. But from 14th December, 1966 no such claim can be made, at least by the Republican Party of India. At the time of the amendment of the definition of 'multi State party' by inclusion of the Republican Party of India, the table was not amended. The result is that in Gao, Daman and Diu and also in Pondicherry the symbol of 'elephant' is reserved for Frente Populare and People's Front, recognised parties, and if the Republican Party of India decides to set up an official candidate in these Union Territories, it cannot claim that the symbol of 'elephant' be allotted to its candidate. In the circumstances the Republican Party of India cannot claim that 'elephant' is the reserved symbol of this party for all the States. When 'elephant' cannot be deemed to be the reserved symbol of the Republican Party of India for all the State the symbol ordinarily allotted to the other seven multi State parties cannot also be deemed to be their reserved symbol for all the States. A conflict has thus come in to existence since after the amendment of the notification on 14th December, 1966. It would be advisable for the Election Commission to suitably amend the notification.

Paragraph 2 of the notification is general giving wide power to a candidate at an election in a Parliamentary or Assembly constituency in a State specified in column 1 to select a symbol from amongst the free symbols specified in column 2 or from the reserved symbols specified in column 3 of the table against that State. Had the restrictions not been laid down in the two proviso to paragraph 2 and also in paragraph 3 a cadidate was free to select even a reserved symbol and, similarly, a candidate sponsored by a recognised party could refuse to accept the symbol reserved in that State for the party.

The two provisos to paragraph 2 run as below:—

> "Provided that any such candidate sponsored by a recognised party specified against that State in column 4 of the Table shall choose, and shall be allotted, the reserved symbol of that party and no other symbol:
>
> Provided further that any such candidate sponsored by a multi-State party not specified against that State in column 4 of the Table may choose, and may be allotted, the reserved symbol of that party".

A comparison of these two provisos shall indicate that there are in substance, only two differences in the phraseology. In the first proviso that word 'shall' has been used at both the places while in the second proviso the word 'may'. The second difference is that the words 'and no other symbol' have been omitted in the second proviso.

The word 'may' cannot generally be given the same meaning as 'shall' though in special circumstances, that is, in the light of the context, to carry out the intention of the framers of the law and rules, the provision can be held to be mandatory even though the word 'may' has been used. It will be appropriate to

quote in this connection the following observations of the Supreme Court in *State of U.P. V. Jogendra Singh* (A.I.R. 1963 S.C. 1918):—

> "There is no doubt that the word 'may' generally does not mean 'must' or 'shall'. But it is well settled that the word 'may' is capable of meaning 'must' or 'shall' in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word 'may' which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word 'may' out deference to the hig status of the authority on whom the power and the delegation are intended to be conferred and imposed."

In this proceeding we are not concerned with the effect of the first 'may' used in the second proviso. What we have to consider is whether the second part of this proviso regarding the allotment of symbol by the Returning Officer is or is not mandatory, as already indicated above, the words of command 'and no other symbol' used in the first proviso have not been incorporated in the second. When the Election Commission used these words in one proviso and not in the other, it must have had some object in mind, which, in my opinion, can be none other than that the second part of the first proviso is mandatory while the corresponding part of the second proviso is not. This finds confirmation from the table appended to the notification which was, as already indicated above, not amended when the name of the Republican Party of India was included in the definition clause as the 8th multi state party. In Goa, Daman and Diu, and also in Pondicherry, the 'elephant' symbol is reserved for Frente Populare and People's Front, recognised parties. Consequently, if the Republican Party of India decides to set up candidates in these Union territories and there are also candidates sponsered by Frente Popular and People's Front, by virtue of the mandatory provision contained in the first proviso, the 'elephant' symbol shall have to be allotted to the sponsored candidates of these political parties and not to the candidates sponsored by the Republican Party of India. When the 'elephant' symbon cannot in these Union territories be allotted to the Republican Party of India, even though in many States the Republican Party of India can regard 'elephant' as its reserved symbol, the latter part of the second proviso to paragraph 2 of the notification cannot be held to be mandatory. A mandatory provision is one which the authority cannot disregard and must follow. Consequently, when the Returning Officers, of the Union Territories of Goa, Daman and Diu, and also of Pondichery have no authorities to allot the 'elephant' symbol to the Republican Party of India, the second 'may' used in the second proviso cannot be held to be mandatory. A provision cannot be interpreted in one manner with reference to one set of political parties and in a different manner while considering the case of political parties falling in a different group. A provision must be given the same meaning throughout, though on the ground of arbitrariness the order of the Returning Officer, even though discretionary, can be quashed. It must therefore be held that the second part of the second proviso does not place any obligation on the Returning Officer and, further, on reading the notification as a whole it must be held that this provision is not such as restricts his jurisdiction. The provision cannot be held to be mandatory and being discretionary the word 'may' used in the latter part of the second proviso must be given its ordinary meaning. When the second proviso is, in so far as the Returning Officer is concerned, discretionary, his order not allotting the 'elephant' symbol to the petitioner cannot be held illegal or in non-compliance of the rules unless found to be arbitrary.

This takes us to the consideration of the question whether there was compliance of paragraph 4 of the above notification. Paragraph 3 governs the allotment of the free symbols to candidates not sponsered by a particular recognised party, and requires no comment. Paragraph 4 lays down the circumstances in which a candidate can be deemed to be sponsored by a particular recognised party. It provides that for the purposes of paragraph 2 of the notification a candidate shall be deemed to be sponsored by a particular recognised party if, and only if, the conditions contained in clauses (a) to (c) thereof are fulfilled. The words and only 'if used in paragraph 4 are of great significance and make it clear that for non-compliance of any of the three clases (a) to (c) a candidate, even though sponsored by a recognised party, shall not be deemed to have been sponsored by that party and cannot be allotted the symbol reserved for that party. Election law has to be strictly construed (see *Ranjit Singh V. Pritam Singh and others* A.I.R. 1966 S.C. 1926). Further, paragraph 4 of the notification has been worded so emphatically that candidate cannot be deemed to be sponsored by a particular recognised party unless all the three conditions are fulfilled. These three conditions are (1) the candidate has made a declaration to that effect, his being sponsored by a particular

recognised party, in his nomination paper, (2) a notice in writing to that effect signed by the President, Secretary or other office bearer of the party who is authorised by the party to send such notices, has been delivered to the Returning Officer of the constituency not later than 3 p.m. on the last date for withdrawal of candidature, and (3) the name and specimen signatures of the person giving notice have been communicated in advance to the said Returning Officer and to the Chief Electoral Officer of the State.

In the instant case, the petitioner had made the necessary declaration in his nomination paper. A notice in writing had also been delivered within time and the name and specimen signatures had been communicated in advance to both, the Returning Officer and the Chief Electoral Officer of the State. The notice was signed by Dr. Gaya Prasad Prashant (P.W. 10), who was the State Secretary of the Republican Party of India, U. P. the point for consideration is whether Dr. Gaya Prasad Prashant was duly authorised by the Republican Party of India to send the notice contemplated by paragraph 4 of the notification. It is true that this point does not appear to have been raised directly before the Returning Officer; but when the order of the Returning Officer is being challenged, its egality must be judged from all the aspects and not only the point which was raised before him. A Returning Officer has to act quickly invariably without recording evidence. Consequently, if he is inclined to pass an order on one ground it is not necessary for him to consider others. If the validity of the order of the Returning Officer is in issue before the courts of law, all the aspects of the question must be looked into and if the order can be upheld on a different ground it need not be quashed. Similarly, the fact that the other notices given by Dr. Gaya Prasad Prashant were accepted and the 'elephant' symbol was allotted to other candidates can be no ground to justify disregarding the above question in a proceeding where the legality of the order of allotment of symbol is in issue.

The definitions contained in paragraph 1 speak of a party generally, not with reference to a particular State. Consequently, if the jurisdiction of a political party extends to more than one State the political party shall be the All India party or the chief party and not its branches, namely, the State parties. This inference can also be drawn from the definition of 'multi State party' Multi State parties are the Indian National Congress, the Swatantra Party, the Communist Party of India the Communist Party of India (Marxist), the Bhartiya Jana Sangh, the Praja Socialist Party, the Samyukta Socialist Party and the Republican Party of India. The recognised party is thus the Republican Party of India and not the Republican Party of India in a particular State. The word 'party' in clause (c) of paragraph 4 of the notification shall, therefore, mean the All India body of that party. Dr. Gaya Prasad Prashant was not the President or the Secretary of all India Party. He was merely Secretary of the U. P. Branch of the Republican party of India. He will therefore, not have the authority to give the requisite notice unless authorised by the party, that is, the Republican Party of India.

On the basis of the Constitution of the Republican Party of India it can, at the most, be said that the decision of its Chief Executive Committee is or can be deemed to be the decision of the party. No final opinion is being expressed on this point. Sri Khan Chandra *alias* Sangh Priya Gautam (P.W. 7), who was a member of the Central Executive Committee of the Republican Party of India, has clearly deposed that Dr. Prashant was so authorised by the General Secretary of the party and not by the Central Executive Committee. In the examination-in-chief he deposed that the President and the Executive Committee of the party authorised Barrister B. D. Khobra Gade, General Secretary, to make correspondence with the Election Commission of India in all matters connected with the General Election and that for the purposes of Uttar Pradesh Barrister B. D Khobra Gade authorised Dr. Gaya Prasad Prashant to make correspondence in connection with the election and to allot party symbol 'elephant' to the candidates of the Republican Party of India from Uttar Pradesh. This statement, if construed liberally, would simply show that Dr. Prashant was authorised to give notice not by the party but by its Secretary, Barrister B. D. Khobra Gade. The witness made this point further clear in cross examination when he admitted that the "General Body and also the Executive Committee of the Republican Party of India had not passed any resolution authorising Dr. G. P. Prashant to give the notice of the candidates of the party, but the office bearers of the three Pradesh Committees of the U. P. moved the President and the General Secretary of the Republican Party of India nominate Dr G P. Prashant as the person to give such a notice in view of the fact that he was the Secretary of the State Republican Party."

The notice contemplated by paragraph 4 of the notification has to be given either by the President or the Secretary of the Party, or by an office bearer of

the party who is authorised by the party to send such notices. The present notice was not given by the President or the Secretary of the Republican Party of India. It was given by Dr. Prashant, who can fall under the category of 'other office bearer. The person who had so authorised Dr. Prashant was the General Secretary of the party and not the party itself. Therefore, in the eye of law, no notice with regard to the petitioner having been sponsored by the Republican Party of India was given and he could not be deemed to be sponsored by the Republican Party of India and in the circumstances, the Returning Officer could not allot the 'elephant' symbol to him. In any case, when the 'elephant' symbol was not allotted to him he can have no cause of grievance.

Even otherwise the discretion exercised by the Returning Officer cannot be said to be arbitrary. He did not allot the 'elephant' symbol to the petitioner, not to Sri Brij Pal Singh Nimi, respondent No. 4, because both were claiming to be the official candidates of the Republican Party of India. Sri Brij Pal Singh Nimi was supported by Sri Rahat Maulai while the petitioner by Dr. Prashant. Sri Rahat Maulai is one who had moved the Delhi High Court for quashing the order of the Election Commission whereby the Republican Party of India recognised by the Election Commission was the one presided over by Dada Saheb. B. K. Gaikwad and whose General Secretary was Sri B K. Khobra Gade. The Delhi High Court quashed the order and directed the deletion of the names of the President and the General Secretary. In the circumstances, the Returning Officer could, in good faith, be of the opinion that there existed a dispute as to the office bearer of the Republican Party of India and where there were two candidates sponsored by the two groups of the Republican Party of India, not to treat any one as the official candidate of the party, that is, the candidate sponsored by the Republican Party of India. From the evidence on record it is evident that the same Returning Officer allotted the 'elephant' symbol to a candidate sponsored by Dr. Prashant, if there was no rival candidate claiming to have been sponsored by the Republican Party of India.

When the discretion exercised by the Returning Officer cannot be classed as arbitrary, his order not allotting the 'elephant' symbol to the petitioner, nor to respondent No. 4, cannot be quashed. In other words, the order refusing to allot the 'elephant' symbol to the petitioner was neither against the rules nor was arbitrary.

When there was no non-compliance with the provisions of the Constitution nor of the Representation of People Act of any rules or order made thereunder, the election of the returned candidate cannot be declared to be void, and it is not necessary to consider the allied question if the result of the election had been materially affected. However, in view of the fact that certain allegations have been made against the conduct of respondent No 1 it shall be proper to make brief comments on the evidence adduced by the petitioner.

Before commenting on the evidence reference may be made to certain difficulties which in may opinion, can arise in the enforcement of the above notification of the Election Commission issued under Rule 5(1) of the Conduct of Election Rules, 1961, so that the Election Commission may keep those aspects in mind while modifying the notification or issuing fresh notification under rule 5(1)3.

Where there is no groupism or differences in a political party, enforcement of paragraph 4 of the notification will create no difficulty as that party shall sponsor only one candidate and the reserved symbol can be allotted to him. But what is to happen if the same party sponsors till the end two candidates or by mistake the requisite notice has been given before the withdrawal of the dummy candidate? It is not unusual for a political party to nominate more than one person to file the nomination paper to ensure that if the nomination paper of the main candidate is for some reason, rejected there is another candidate of the party to contest the election. If all goes well the dummy candidate withdraws his candidature within time and there will be only one candidate sponsored by the party and its reserved symbol can be allotted to that candidate. But how has the Returning Officer to act if the dummy candidate refuses to withdraw his candidature within time, has not been laid down in the notification. If the sponsored candidate is of a 'recognised party' it is obligatory on the Returning Officer to allot the reserved symbol of that party to the candidate sponsored by that party. Where there are two candidates duly sponsored by the party reserved symbol cannot be allotted to both. It appears necessary to provide a longer period for the delivery of the notice contemplated by paragraph 4 of the notification so that the party may be in a position not to sponsor a dummy candidate. Further, it should be permissible

for the person giving the notice to modify it in case the names of more than one person were indicated in the notice as the candidates sponsored by the party.

Where there are two groups in the party a question will often arise who can be recognised as the President, Secretary or the other office bearer of the party and who can be deemed to have been duly authorised by the party. Considering that the Returning Officers have to act quickly it shall be proper to provide that where there exists a dispute not resolved by the party itself or by the courts of law, the reserved symbol shall not be allotted to the rival candidates who shall be treated as 'independents'.

It is not clear why the first part of the second proviso to paragraph 2 of the notification has been made discretionary, leaving it open to the candidate sponsored by a multi-State party to choose or not to choose the symbol ordinarily allotted to that party. A candidate not choosing the symbol of that party can always stand as an independent candidate. His right to stand for election is not dependent upon his being sponsored by a party. Further, a candidate accepting certain benefits arising out of the membership of the party should also bear the liabilities, if any, resulting from the allotment of the party's symbol.

Generally speaking reconsideration of the whole question appears desirable to ensure that the Returning Officers feel no difficulty and can act quickly, at the same time the candidates sponsored by recognised or multi State parties are in a position to do canvassing months ahead of the poll.

Four grounds were raised to show that the result of the election had been materially affected as a result of the non-allotment of the 'elephant' symbol to the petitioner. It is said that many voters left the ballot papers blank and many others did not at all go to the polling station on finding that there was no candidate with the 'elephant' symbol, that is there was no official candidate of the Republican Party of India. It is also suggested that if the petitioner were allotted the 'elephant' symbol most of the votes cast for Sri Brijpal Singh Nimi, respondent No. 4 would have been cast for him (petitioner). Lastly, as a result of the non-allotment of the 'elephant' symbol respondent No. 1 propagated that the petitioner was not a candidate of the Republican Party of India, and also spread the news that the Republican Party of India had not chosen to set up a candidate against him. It was further alleged that Sri Brijpal Singh Nimi and Sri Nardeo, respondents maligned the petitioner by saying that he was found unfit to be a representative of the Republican Party of India as he was not allotted the 'elephant' symbol of that party.

With regard to the last allegation the petitioner materially changed his version during the evidence. It was then alleged that respondent No 1 propagated that the higher officials of the Republican Party of India were helping him (respondent No. 1). This was put to the petitioner for his explanation and what he stated is that there was no appreciable difference in the two versions.

There is no evidence in support of the allegation that respondent No. 1 and 4 had maligned the petitioner by stating that he was found unfit to be a representative of the Republican Party of India.

The petitioner himself appeared in the witness box and examined ten witnesses. Comments can now be made, in brief on the testimony of these witnesses. Raghubir Singh Nim (P.W. 1) deposed that as a result of the non-allotment of the symbol 'elephant' confusion was created among voters: the public felt that the petitioner was not the official candidate of the Republican Party of India and for that reason the 'elephant' symbol was not allotted to him; and that respondent No. 4 made the propaganda that he was the candidate of the Republican Party of India for the reason that the official symbol had not been allotted to any one. These two statements are self-contradictory. If the allotment of the 'elephant' symbol was to indicate who was the official candidate of the Republican Party of India, respondent No. 4, who was also not allotted the symbol, could not have made the propaganda that he, and not the petitioner, was a candidate of the Republican Party of India. Raghubir Singh Nim has supported the later version of the petitioner, namely, that respondent No. 1 had made the propaganda that the Republican Party of India was supporting him and the people should vote for him. This version cannot be accepted considering that there is a conflict in the plea raised by the petitioner at the two stages and, further, if respondent No. 1 had made such a propaganda the Republican Party of India would have made a counter propaganda in writing also making it clear that the party was not supporting respondent No. 1 and the propaganda to the contrary was false. No such counter propaganda was made in writing. The explanation given by the

petitioner is that if this were done the party would have got a bad name. The explanation does not appear convincing. Raghubir Singh Nim also said that respondent No. 1 had made the propaganda that Republican Party of India had no candidate as the symbol of the party was not allotted to any one. This propaganda, if made, is not of significance.

The witness referred to the success of the Republican Party of India in 1962 General Elections but this point cannot in the existing conditions, be given much importance. 1967 Elections produced a result which no one had foreseen, when many political parties elected to the Legislature and the Parliament in 1962 thumping majority ceased to be in majority or were in a bare majority. Success in 1962 Elections cannot therefore, indicate the mind of the electors in 1967.

Raghubir Singh Nim originally deposed that after the allotment of symbol the petitioner had made sufficient propaganda but later changed his version by saying that propaganda could not be made in all the areas. This statement of the witness made initially would thus show that the petitioner was not handicapped on account of the non-allotment of the 'elephant' symbol. In the end the witness further stated that on the date of the poll many voters told him that on account of the non-allotment of the 'elephant' symbol, the symbol for which the petitioner had made the propaganda, many voters had cast votes for the other symbols and some of them complained that they had been cheated 'by selling the symbol of 'elephant'. Raghubir Singh Nim does not say that the voters complaining were illiterate or there was a big percentage of illiterate voters in the constituency. Consequently, the casting of votes for other symbols could not be the result's of the non-allotment of the 'elephant' symbol to the petitioner.

Raghubir Singh Nim has indicated his lack of knowledge as to the claim of Sri Brijpal Singh Nimi, respondent No. 4, claiming to be the candidate of the Republican Party of India. He is apparently a person who is concealing facts so that it may not come on record that there were two candidates claiming to be the official candidates of the Republican Party of India.

Dharampal Singh (P.W. 2) has made a somewhat different statement. He says that there was confusion in the area on account of the workers of both 'Cycle' and 'Lion' i.e. of respondent No. 4 and the petitioner, claiming to be the candidates of the Republican Party of India. For this respondent No. 1 cannot be blamed, the witness stated in the earlier party of the examination-in-chief that respondent No. 1 was making the propaganda that on account of there being no candidate of the Republican Party of India the members of that party should vote for the Congress. Later the witness adopted the changed version of respondent No. 1 by saying that the Congress workers were saying that the Congress candidate was being supported by the higher office-bearers of the Republican Party of India. This cannot be accepted. Dharampal Singh was canvassing for the petitioner and he was incharge of an area 8 or 10 miles on all the sides of Hathras town. Propaganda could easily be made in such an area with the changed symbol. The witness admitted that the people of Sikandra Rao were more acquainted with the petitioner than those of Hathras. This may be the reason why the petitioner got lesser votes in this area.

Budhpal Singh (P.W. 3) is a member of the Praja Socialist Party. In the examination-in-chief he deposed that the Congress candidate was making the propaganda that on account of the 'elephant' symbol not being allotted to anyone, he had the support of the Republican Party of India. How could any one make such a claim? Further, in cross-examination he admitted that he had no personal knowledge.

Babu Lal (P.W. 4) says that he did not cast his vote at the polling station because Sri Brijpal Singh Nimi was making the propaganda in the village that he was a candidate of the Republican Party of India while respondent No. 1 was saying that there had been compromise between the Congress and the Republican Party of India and people should vote for him. He further says that he wanted to vote for Chandra Pal Shailani with the symbol of 'elephant'; that he went to Sobha Ram, worker of the Republican Party of India at the polling station, and asked for the 'perchi' of 'elephant' but was told that no candidate had such a symbol; and that he (Babu Lal) then came back from the polling station as no one had informed him that the symbol of the petitioner had been changed. Babu Lal is one who could easily read the name of the petitioner. He was called upon to explain why he did not go to the polling station, as he could have cast his vote for the petitioner after reading his name in the ballot paper. The witness gave many replies which were not at all plausible and in the end said that he was

not so educated and was paying more attention to the symbol. In other respects also he has made an unsatisfactory statement. About the Congress propaganda, he had to admit that he did not hear anything but had been informed by his brother.

Hari Chand (P.W. 5) is silent whether he did or did not cast his vote at the election. In substance, what he says is that as no one was allotted the symbol of 'elephant' he could not know who was the official candidate of the Republican Party of India. At another place he stated that respondent No. 4 had come to the village and said that the 'cycle' was the symbol of the Republican Party of India and that the witness should vote for 'cycle'. By the non-allotment of the symbol what the witness could feel was that the Election Authorities had not recognised anyone as the official candidate of the Republican Party of India. But this could not stop him from casting his vote for a candidate of his choice.

Bhikey Lal (P.W. 6) has made conflicting statements as to the propaganda made by respondent No. 1. Originally, he deposed that respondent No. 1 and his workers made the propaganda "that the Republican Party's 'elephant' had sat down and the party was helping the Congress". When the witness was called upon to clarify the statement he stated that the propaganda made was that the petitioner was no longer contesting the election and was helping the Congress. Thereafter, he gave two other different versions, namely, that the Republican Party of India had no candidate and was supporting the Congress; and the propaganda made was that the Republican Party of India had no candidate of its own. The witness also tried to make a false statement as to his knowledge of P. W. Raghubir Singh Nim.

Khan Chandra *alias* Sangh Priya Gautam (P.W. 7) is an office bearer of the Republican Party of India. He has suggested as if there were no two groups in the Republican Party of India and the party of Maulai formed a different political party. Statement of other witnesses is to the contrary. The witness says that he had heard three workers of the Republican Party of India, namely Ved Ram, Dharam Pal Singh and Sia Ram Nim, making the propaganda that because the symbol of 'elephant' was not allotted to the petitioner there was no candidate of the Republican Party of India and that the Republican Party of India was supporting respondent No. 1. It is rather surprising that this propaganda was not counter-acted by issuing an pamphlet in writing. No immediate action in writing was also taken against the three members of the Republican Party of India who were canvassing against the petitioner. What the witness says in this connection that he simply instructed the party unit at Hathras to watch the activities of the three persons and to take action if they were against the party. This was not expected from the witness in case he had himself heard the three members of the Republican Party of Irdia making a propaganda against the party.

Bahoran Singh (P.W. 8) has no personal knowledge and made no statement on the point in issue.

S Gur Dev Singh (P.W. 9) is the Deputy Chief Electoral Officer, U.P., Lucknow. In his statement he merely deposed about the various steps taken by the Election Authorities. His deposition could be of some help in case the legal position was that the petitioner should have been treated as the official candidate of the Republican Party of India and should have been allotted the symbol of 'elephant'.

Dr Gaya Prasad Prashant (P.W. 10) has made a statement to whom that the 'elephant' symbol should have been allotted to the petitioner. He is not a straight forward witness He says that he did not know if Sri Brijpal Singh Nimi had stood for the election from the present constituency. He could not also say why the symbol of 'elephant' was not allotted to the petitioner. Apparently, he is concealing facts

The last witness is the petitioner Chandrapal Shailani, himself. He has also not made a convincing statement and on any points his testimony is in conflict with the Returning of Election expenses submitted by him. If the Return is made the of judging his testimony, it would appear that the major part of the canvassing was done by him after the allotment of the symbol. He also alleged that respondent No. 1 was making the propaganda that he had a talk with the leaders of the Republican Party of India and the Republican Party of India was supporting him (respondent No. 1) if such a propaganda did take place, the petitioner should have made a counter propaganda in writing also.

On the basis of the oral evidence, it cannot be said that respondents 1 and 4 had made the propaganda as alleged in the Election Petition, nor as alleged in the oral evidence.

Not a single witness has made a statement why ballot papers were left blank. It is possible that the voters, who did not place the mark against the name of any of the candidates, had no intention to cast vote for anyone. In any case, there is no evidence on record that the voters were mostly illiterate and they could exercise the right of franchise only after seeing the symbol and not on reading the names of the candidates. In the circumstances, persons who wanted to cast their vote for the petitioner could have done so on reading the names, all the more when the propaganda appears to have been done not only for the symbol but also for the petitioner by giving out his name. In the pamphlets on record the photograph of the petitioner alongwith his name had also been printed.

Only Babu Lal (P.W. 4) was examined to show that many persons had, like him, come back from the polling station without casting vote on finding that no candidate had been allotted the symbol of 'elephant'. His evidence is unsatisfactory. The petitioner had his workers at the polling station and at the time of the issue of the chits the voters could have been told that vote could be cast for the petitioner after reading his name or for his new symbol.

The seventeen thousands votes cast for respondent No. 4 were cast for him and it cannot be assumed that these votes would have gone to the petitioner in case he had been allotted the symbol of 'elephant'. Respondent No. 4 had made the propaganda with his symbol of 'cycle' and consequently, the votes cast for him would have been given after seeing the symbol or the name of respondent No. 4 on the ballot paper.

It was strongly contended that by the non-allotment of the 'elephant' symbol to the petitioner the real candidate of the Republican Party of India had been kept back from contesting the election and only the shadow of such a candidate was in the field. This contention was raised to avail of the benefit of the law laid down in *Surendra Nath Khosla and another* V. *Dalip Singh and others* (XII E.L.R. 370). That was a case of improper rejection of the nomination paper.

In case of improper acceptance of the nomination paper there can be no presumption (see *Vashist Narain Sharma* v. *Dev Chand & others* (X E.L.R. 30); but where the nomination paper is wrongly rejected and the candidate was not in a position to contest the election, it can be presumed that the result of election had been materially affected by the improper rejection of the nomination paper. Consequently, the courts can draw a presumption of the result of the election being materially affected, only where the electorates had no opportunity to express their choice for the real candidate. When the voters did cast their votes for respondent No. 4 or left the ballot paper blank, it cannot be said that they were not in a position to express their choice for a candidate of their liking. The petitioner's name was printed on the ballot paper and a voter intending to vote for him could record his vote against his name. Evidence with regard to the voters going back from the polling station without taking any step for casting their vote is unsatisfactory. Further, if they had gone inside the polling station, they could have cast their vote for the petitioner on finding his name printed on the ballot paper. The present is not a case in which a resumption can be drawn as to the result of the election having been materially affected as was done in the case of *Surendra Nath Khosla and other* v. *Dalip Singh' and others* (*supra*). The burden of proof that the result of the election had been materially affected lay upon the petitioner, and when the evidence adduced by him is unsatisfactory, it cannot be held, even if it be assumed that there was non-compliance of the rules, that the result of the election was materially affected as a result of the non-compliance of the rules. The issue is decided against the petitioner.

Issue No. 12.—For the reasons given above, it must be held that there was no non-compliance with the provisions of the Constitution or of the Representation of the People Act and the Rules and Orders framed thereunder, when the 'elephant' symbol was not allotted to the petitioner. Further, even if a finding could be recorded in favour of the petitioner, he failed to establish that the result of the election had been materially affected. The Election Petition is thus liable to dismissal with costs. The issue is decided against the petitioner.

ORDER

The petition is hereby dismissed with costs payable to Sri Nardeo, respondent, only. The total casts payable are assessed at Rs. 1000/-.

Dated 31st January, 1968.

Sd./- D. S. MATHUR,

[No. 82/31 of 1967/UP/67(Alld.).]

By Order,

A. N. SEN, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 9th May 1968

S.O. 1867.—In exercise of the powers conferred by Clause (1) of article 258 of the Constitution, the President hereby entrusts to the Governments of Maharashtra, Gujarat and Haryana with their consents, the functions of the Central Government under the exolanation to Section 25 of the Negotiable Instruments Act, 1881 (26 of 1881) subject to the condition that nothwithstanding this entrustment, the Central Government may itself exercise the said functions should it deem fit to do so in any case.

[No. 39/1/68-Judl. III.]

K. THYAGARAJAN, Dy. Secy.

New Delhi the 21st May 1968

S O. 1868.—In exercise of the powers conferred by sub-section (1) of section 492 of the Code of Criminal Procedure, 1898, (Act V of 1898), the Central Government hereby appoints Shri G. Gopalaswamy, Advocate, Madras as Public Prosecutor for the conduct of prosecution in the original, appellate and revisional courts in the state of Madras, in the following cases, namely:—

(1) R.C. 13/66/EOW/Madras against Shri B. P. Patel M/s. B. P. Patel & Co., 187, Princess Street, Bombay, and others.

and

(2) R.C. 17/66/EOW/Madras against Shri S. Nataraj. Director, M/s. Somasundarams (P) Ltd., 516/2, Mysore Road, Bangalore, and others.

[No. 225/15/68-AVD.II.]

A. P. VEERA RAGHAVAN, Dy. Secy.

New Delhi, the 21st May 1968

S.O 1869.—In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the President hereby makes the following rules further to amend the Manipur Employees (Revision of Pay) Rules, 1966.

These rules may be called the Manipur Employees (Revision of Pay) Rules Amendment Rules, 1968.

In schedule to the Manipur Employees (Revision of Pay) Rules, 1966.

(i) Under the heading "Public Works Department" for the existing entries against item No. 26, the following entries in columns 1, 2, 3, and 4 respectively shall be inserted:—

26. Wel'rman (Water Works) Clearner-Assistant Operator, Handyman	35-1-45	85-1-90-2-100-2-50-105-3-135.

(ii) Under the heading "Public Works Department" for the existing entry under column 2 against serial No. 55, the following entry shall be inserted:—

Rs. 75-3-105-EB-4-125.

[No. 1/16/65-HMT.]

R. C. JAIN, Dy. Secy.

New Delhi, the 23rd May 1968

S.O. 1870.—In exercise of the powers conferred by the proviso to article 309 of the Constitution, read with rule 33 of the Central Civil Services (Classification, Control and Appeal Rules 1965, the President hereby makes the following rules further to amend the Central Civil Services (Classification, Control and Appeal) Rules, 1965, namely :—

1. (1) These rules may be called the Central Civil Services Classification Control and Appeal Third Amendment Rules, 1968.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Schedule to the Central Civil Services (Classification Control and Appeal) Rule 1957, which is deemed to be the Schedule to the Central Civil Services Classification, Control and Appeal) Rules, 1965, by vitrue of rule 33 thereof, in Part II—Central Civil Services, Class I,—

(*a*) for the entries in columns 3 and 4, against each of the entries "Section Officers' Grade of the Central Secretariat Service excluding Section Officers with Class I status" and "Central Secretariat Stenographers Service, Grade I" in column I, the following entries shall be substituted, namely :—

3	4
"President	All
In respect of a member of the Service serving in :—	
(*a*) a Ministry or Department of the Government participating in the Service, other than a Ministry or Department hereinafter specified	
Secretary, Cadre Authority	(*i*)
(*b*) a Ministry or Department of the Government not participating in the Service—	
Secretary in the Ministry or Department	(*i*)
(*c*) an attached office whether participating or not participating in the Service—	
(*i*) if such office is under the control of a Head of the Department directly under Government—	
Head of the Department	(*i*)
(*ii*) in other cases—	
Secretary, Cadre Authority	(*i*)
a non-Secretariat office other than an office hereinafter specified—	
(*i*) if such office is under the control of a Head of the Department directly under Government—	
Head of the Department	(*i*)
(*ii*) on other cases—	
Secretary, Cadre Authority	(*i*)
(*e*) Ministry of Finance (Defence Division)—	
Financial Adviser, Defence Division	(*i*)
(*f*) Office of the Union Public Service Commission—	
Secretary Union Public Service Commission	(*i*)

(*b*) (*i*) for the entries "Central Secretariat Service, Grade IV" and "Central Secretariat Stenographers Service, Grades II and III" in column 1, the entries "Assistants' Grade of the Central Secretariat Service" and "Central Secretariat Stenographers Service, Grade II" shall respectively be substituted; and

(*ii*) for the entries in columns 3 and 4 against each of the entries in column (1) as substituted aforesaid, the following entries shall be substituted, namely :—

3	4
"President	All
In respect of a member of the Service serving in :—	
(*a*) a Ministry or Department of the Government participating in the Service, other than a Ministry or Department hereinafter specified—	
Secretary Cadre Authority	(*i*) to (*iv*)

3	4
(b) a Ministry or Department of the Government not participating in the Service—	
Secretary in the Ministry or Department	(i) to (iv)
(c) an attached office whether participating or not participating in the Service—	
(i) if such office is under the control of a Head of the Department directly under Government—	
Head of the Department	(i) to (iv)
(ii) in other cases—	
Secretary, Cadre Authority	(i) to (iv)
(d) a non-Secretariat office other than an office hereinafter specified—	
(i) if such office is under the control of a Head of the Department directly under Government—	
Head of the Department	(i) to (iv)
(ii) in other cases—	
Secretary, Cadre Authority	(i) to (iv)
(e) Ministry of Finance (Defence Division)	
Financial Adviser Defence Division	(i) to (iv)
(f) Office of the Union Public Service Commission—	
Secretary, Union Public Service Commission	(i) to (iv)"

[No. 7/5/68-Ests(A).]

P. N. KALRA, Under Secy.

CORRIGENDUM

New Delhi, the 23rd May 1968

S.O. 1871—In the Government of India, Ministry of Home Affairs notification dated the 7th May, 1968, published as S.O. No. 1690, in the Gazette of India, Part II Section 3(ii) dated the 18th May, 1968, for the words and brackets,

"(Second Amendment)" read

"Amendment".

[No. F.3/4/68-Pub.I.]

L. D. HINDI, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 23rd May 1968

S.O. 1872.—Statement of the Affairs of the Reserve Bank of India as on the 17th May, 1968

BANKING DEPARTMENT

LIABILITIES	Rs	ASSETS	Rs.
Capital Paid Up	5,00,00,000	Notes	28,23,20,000
		Rupee Coin	3,64,000
Reserve Fund	80,00,00,000	Small Coin	4,10,000
National Agricultural Credit (Long Term Operations) Fund	131,00,00,000	Bills Purchased and Discounted :—	
		(a) Internal	..
		(b) External	..
		(c) Government Treasury Bills	82,62,51,000
National Agricultural Credit (Stabilisation) Fund	25,00,00,000	Balances Held Abroad*	121,64,17,000
National Industrial Credit (Long Term Operations) Fund	30,00,00,000	Investments**	269,42,19,000
		Loans and Advances to : -	
		(i) Central Government	..
		(ii) State Governments@	96,64,33,000
Deposits—		Loans and Advances to : —	
		(i) Scheduled Commercial Banks†	114,23,20,000
(a) Government—		(ii) State Co-operative Banks††	142,98,00,000
		(iii) Others	2,50,15,000
(i) Central Government	96,13,84,000		

LIABILITIES	Rs.	ASSETS	Rs.
		Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund—	
(ii) State Governments . .	4,91,81,000	(a) Loans and Advances to :—	
		(i) State Governments	31,71,15,000
		(ii) State Co-operative Banks . .	11,41,14,000
		(iii) Central Land Mortgage Banks . .	..
(b) Banks—		(b) Investment in Central Land Mortgage Bank Debentures	7,93,62,000
(i) Scheduled Commercial Banks .	140,23,29,000	Loans and Advances from National Agricultural Credit (Stabilisation) Fund—	
(ii) Scheduled State Co-operative Banks	6,49,68,000	Loans and Advances to State Co-operative Banks	6,77,00,000
(iii) Non-Scheduled State Co-operative Banks	74,34,000		
(iv) Other Banks	6,29,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
(c) Others	323,39,42,000	(a) Loans and Advances to the Development Bank	6,08,93,00
		(b) Investment in bonds/debentures issued by the Development Bank	
Bills payable	21,02,17,000		
Other Liabilities	129,33,44,000	Other Assets	71,06,95,000
Rupees	993,34,28,000	Rupees	993,34,28,000

*Includes Cash and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@ Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 95,45,21,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 22nd day of May, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 17th day of May, 1968.

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	28,23,20,000		Gold Coin and Bullion:—		
Notes in circulation	3356,11,96,000		(a) Held in India	115,89,25,000	
			(b) Held outside India	..	
Total Notes issued		3384,35,16,000	Foreign Securities	206,42,00,000	
			TOTAL		322,31,25,000
			Rupee Coin		68,99,70,000
			Government of India Rupee Securities		2993,04,21,000
			Internal Bills of Exchange and other commercial paper		..
Total Liabilities		3384,35,16,000	Total Assets		3384,35,16,000

Dated the 22nd day of May, 1968.

B. N. ADARKAR,
Dy. Governor.

[No. F. 3(3)-BC/68.]

V. SWAMINATHAN, Under Secy.

(Department of Revenue & Insurance)

ESTATE DUTY

New Delhi, the 17th May 1968

S.O. 1873.—In exercise of the powers conferred by Sub-section (2A) of Section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Government hereby appoints Shri K. P. Bhatnagar, Assistant Commissioner of Income-tax, as an Appellate Controller of Estate Duty with headquarters at Delhi and makes the following amendments in the Schedule to the notification of the Government of India in the Ministry of Finance (Department of Revenue & Company Law) No. 35/F. No. 1/20/64-E.D. dated the 22nd May, 1964, namely:—

In the Schedule to the said notification, for the entry,

"4. Shri K. C. Srivastava, Assistant Commissioner of Income-tax, Delhi,"

the following entry shall be substituted namely:—

"4. Shri K. P. Bhatnagar, Assistant Commissioner of Income-tax, Delhi."

2. This notification shall be deemed to have come into force on the afternoon of 30th day of Septemper, 1967.

[No. 18/F. No. 1/9/67-E.D.]

S.O. 1874.—In exercise of the powers conferred by Sub-section (2A) of Section 4 of the Estate Duty Act, 1953 (34 of 1953), the Central Government hereby appoints Shri K. Singh, Assistant Commissioner of Income-tax as an Appellate Controller of Estate Duty with headquarters at Delhi and makes the following amendments in the Schedule to the notification of the Government of India in the Ministry of Finance (Department of Revenue & Company Law) No. 35/F. No. 1/20/64-E.D. dated the 22nd May, 1964, namely:—

In the Schedule to the said notification, for the entry,

"4. Shri K. P. Bhatnagar, Assistant Commissioner of Income-tax, Delhi,"

the following entry shall be substituted namely:—

"4. Shri K. Singh, Assistant Commissioner of Income-tax Delhi."

2. This notification shall be deemed to have come into force on the forenoon of 14th December, 1967.

[No. 20/F. No. 1/9/67-E.D.]

E. K. LYALL, Dy. Secy.

(Department of Revenue and Insurance)

CUSTOMS

New Delhi, the 25th May 1968

S.O. 1875.—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962(52 of 1962), the Central Government hereby appoints Shri M. C. Das, Collector of Central Excise, Bangalore, as the Collector of Customs, Hyderabad also.

2. The appointment of Shri M. C. Das made under paragraph 1 shall be without prejudice to the appointment of Shri M. L. Routh as the Collector of Central Excise, Hyderabad.

[No. 78-F. No. 2/1/68-LC/II.]

New Delhi, the 1st June 1968

S.O. 1876.—In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 39-Customs dated the 1st April 1967, namely:—

In the said notification, in clause (v) of paragraph 1, the words "if the same is of a cottage industry type and" shall be omitted.

[No. 81/F. No.90/43/68-L.C.I.]

M. S. SUBRAMANYAM, Under Secy.

(Department of Revenue and Insurance)

New Delhi, the 27th May 1968

S.O. 1877.—In exercise of the powers conferred by sub-clause (iii) of clause (44) of section 2 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby authorises Shri R. Choudhury, who is a Gazetted Officer of the West Bengal Government, to exercise the powers of a Tax Recovery Officer under the said Act in respect of the following areas in the State of West Bengal, namely:—

(1) The whole of 24-Parganas Civil District excluding such areas as fall within the Calcutta Municipal Limits, and

(2) Calcutta Municipal Wards Nos. 1 to 100.

[No. 45 (F. No. 16/84/68-ITB).]

S. BHATTACHARYYA, Dy. Secy.

CENTRAL BOARD OF DIRECT TAXES

ESTATE DUTY

New Delhi, the 17th May 1968

S.O. 1878.—In exercise of the powers conferred by Sub-section (2A) of Section of the Estate Duty Act, 1953 (34 of 1953) and in partial modification of its notification No. 14/F. No. 1/31/66-E.D. dated the 29th September, 1966 published as S.O. 2959 in Part II, Section 3(ii) of the Gazette of India dated 8th October, 1966, the Central Board of Direct Taxes hereby directs that Shri K. P. Bhatnagar, an Assistant Commissioner of Income-tax, appointed to be an Appellate Controller of Estate Duty by the notification of the Government of India, Ministry of Finance (Department of Revenue & Insurance) No. 18/F. No. 1/9/67-E.D. dated the 17th May, 1968, shall perform the functions of an Appellate Controller of Estate Duty in respect of—

(a) The estates of deceased persons assessed to estate duty on or after the 1st July, 1960, by an Assistant Controller of Estate Duty, and

(b) The estates of deceased persons in relation to which an appeal lies under Section 62 of the Estate Duty Act, 1953, against an order passed on or after the 1st July, 1960, by an Assistant Controller of Estate Duty,

where such Assistant Controller has in exercise of his functions under the Estate Duty Act, 1953, made such assessments or passed such orders—

(i) in any area comprised within the jurisdiction of the Commissioner of Income-tax mentioned below:—

Commissioner of Income-tax, Delhi.

Commissioner of Income-tax, Rajasthan.

Commissioner of Income-tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh.

Commissioner of Income-tax, Uttar Pradesh-I.

Commissioner of Income-tax, Uttar Pradesh-II.

Commissioner of Income-tax, Madhya Pradesh, Bhandra and Nagpur.

Commissioner of Income-tax, Training, Nagpur.

(ii) in respect of any of the estates of the deceased persons who were being assessed to Income-tax in the jurisdiction of the Commissioner of Income-tax (Central) Delhi.

2. This notification shall be deemed to have come into force on the afternoon of 30th of September, 1967.

[No. 19/F. No. 1/9/67-E.D.]

S.O. 1879.—In exercise of the powers conferred by Sub-section (2A) of Section 4 of the Estate Duty Act, 1953 (34 of 1953) and in partial modification of its notification No. 19/F. No. 1/9/67-E.D. dated 17th May, 1968, the Central Board of Direct Taxes hereby directs that Shri K. Singh, an Assistant Commissioner of

Income-tax, appointed to be an Appellate Controller of Estate Duty by the notification of the Government of India, Ministry of Finance (Department of Revenue and Insurance) No. 20/F. No. 1/9/67-E.D. dated 17th May, 1968, shall perform the fuctions of an Appellate Controller of Estate Duty in respect of—

(a) The estates of deceased persons assessed to Estate Duty on or after the 1st July, 1960, by an Assistant Controller of Estate Duty, and

(b) The estates of deceased persons in relation to which an appeal lies under Section 62 of the Estate Duty Act, 1953, against an order passed on or after 1st July, 1960, by an Assistant Controller of Estate Duty,

where such Assistant Controller has in exercise of his functions under the Estate Duty Act, 1953, made such assessments or passed such orders—

(i) in any area comprised within the jurisdiction of the Commissioner of Income-tax mentioned below:—

Commissioner of Income-tax, Delhi.

Commissioner of Income-tax, Rajasthan.

Commissioner of Income-tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh.

Commissioner of Income-tax, Uttar Pradesh-I.

Commissioner of Income-tax, Uttar Pradesh-II.

Commissioner of Income-tax, Madhya Pradesh, Bandra and Nagpur.

Commissioner of Income-tax, Training, Nagpur.

(ii) in respect of any of the estates of the deceased persons who were being assessed to Income-tax in the jurisdiction of the Commissioner of Income-tax (Central), Delhi.

2. This notification shall be deemed to have come into force on the forenoon of 14th of December, 1967.

[No. 21/F. No. 1/9/67-E.D.]

E. K. LYALL, Secy.

INCOME-TAX

New Delhi, the 20th May 1968

S.O. 1880.—In exercise of the powers ronferred by sub-section (1) of section 122 of the Income-tax Act, 1961(43 of 1961) and all other powers enabling it in that behalf, the Central Board of Direct Taxes, hereby makes the following amendments in the Schedule appended to its Notification No. 28, dated 25th April, 1968, namely:

Against Japalpur Range, Jabalpur and B-Range, Indore under column 2, the following shall be added:

Jabalpur Range, Jabalpur	14. Income-tax Officer, J-Ward, Jabalpur.
B-Range, Indore	11. Income-tax Officer, N-Ward, Indore.

This notification shall take effect from 20th May, 1968.

Explanatory Note

The amendment has become necessary on account of the creation of two new wards known as J-Ward, Jabalpur and N-Ward, Indore in the Commissioner's charge.

(The above note does not form part of the notification, but is intended to be merely clarificatory).

[No. 38 (F. No. 50/6/68-ITJ).]

S.O. 1881.—In exercise of the powers conferred by sub-section (1) of section 122 of the Income-tax Act, 1961 (43 of 1961) and of all other powers enabling it in that behalf, the Central Board of Direct Taxes, hereby makes the following

further amendments in the Schedule appended to its notification No. 12 Income-tax (F. No. 50/7/66-ITJ), dated the 14th January, 1966, namely:—

I. Against B-Range, Calcutta under column 2 the following shall be substituted:

Companies District II, Calcutta (appeal cases pending and which will be arising in A-Ward to F-Ward, of the District).

II. Against M-Range, Calcutta under column 2 the following shall be substituted:

(1) District II(2), Calcutta.

(2) Special Survey Circle-IX, Calcutta.

III. After V-Range, Calcutta, the following shall be added:

'W'-Range, Calcutta: Companies District-II, Calcutta (appeal cases pending and which will be arising in wards other than A-Ward to F-Ward of the District).

'X'-Range, Calcutta: District IV(3), Calcutta.

This notification shall take effect from 21st May, 1968.

Explanatory Note

The amendment have become necessary on account of the creation of two new ranges of the AAC known as W-Range, Calcutta and X-Range, Calcutta and consequent reallocation of the jurisdiction amongst the AACs in the Commissioner's charge.

(The above note does not form part of the notification, but is intended to be merely clarificatory).

[No. 39(F. No. 50/14/68-ITJ).]

P. G. GANDHI, Under Secy.

INCOME-TAX

New Delhi, the 25th May 1968

S.O. 1882.—In exercise of the powers conferred by sub-section (1) of Section 121 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendments to the Schedule appended to its Notification No. 20 (F. No. 55/1/62-IT), dated 30th April, 1963 published as S.O. 1293 on pages 1454—1457 of the Gazette of India Part II Section 3 sub-section (ii) dated the 11th May, 1963 as amended from time to time:

I. Against Sl. No. 9, Madras-I, under Column 3 of the Schedule appended thereto:

, "(i) The existing entry against item 7 shall be *deleted.*

(ii) The existing entry against item 8 shall be substituted by the following:

8. Kancheepuram, excluding the taluks of Sriperumbudur, Trivellore and Ponneri taluks of Chingleput District.

(iii) The existing items 8 to 21 shall be renumbered 7 to 20".

II. Against Sl. No. 9-B, Madras-II, under Column 3 of the Schedule appended thereto, the following shall be added:

"25. Vellore

26. Sriperumbudur, Trivellore and Ponneri taluks of Chingleput District."

2. This notification shall come into force on the 1st June, 1968.

[No. 44/F. No. 55/176/68-IT(A.II).]

A. RAGHAVENDRA RAO, Under Secy.

CENTRAL BOARD OF EXCISE AND CUSTOMS

CUSTOMS

New Delhi, the 25th May 1968

S.O. 1883.—In pursuance of sub-section (1) of section 5 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby directs that

Shri M. C. Das, Collector of Customs Hyderabad, shall not, as such Collector, exercise any powers or discharge any duties conferred or imposed on a Collector of Customs under the said Act other than those under Chapter XIV thereof.

[No. 79-F. No. 2/1/68-L.C.II.]

M. S. SUBRAMANYAM, Under Secy.

CORRIGENDUM

New Delhi, the 21st May 1968

S.O. 1884.—In the Central Board of Excise and Customs notification No. 63 (F. No. 10/33/67-Ad.V.), dated the 29th April, 1968, which was published as S.O. 1644 in Part II, Section 3, Sub-section (ii) of the Gazette of India dated the 11th May, 1968, *for* the figures, "4.00 4.75 5.00 6.00" appearing therein, *read* the figures, "4.00 4.75 5.50 6.00".

[No. 73 (F. No. 10/33/67-Ad.V).]

T. DUTT, Under Secy.

CENTRAL EXCISE COLLECTORATE, DELHI

CENTRAL EXCISES

New Delhi, the 23rd May 1968

S.O. 1885.—In exercise of the powers conferred by Rule 5 of the Central Excise Rules, 1944, I, the Collector of Central Excise, Delhi, hereby empower the Central Excise Officers not below the rank specified in column (2) of the following table, to exercise within their respective jurisdiction, the powers of the 'Collector' under the Central Excise Rules mentioned in column (3) of the said table, subject to the limitations set out in column (4) thereof:—

TABLE

S. No.	Rank of Officer	Central Excise Rules	Limitations
(1)	(2)	(3)	(4)
1	Assistant Collector	52A	To authorise removals on documents other than Gate Passes in statutory form.
2	—do—	173E	—
3	—do—	173G(4)	To grant exemption from maintaining accounts in "R.G.1 (for assessees working under Self Removal Procedure)", if the assessee is found to be maintaining satisfactory private accounts from which all information as required in the above RG1 can be readily obtained.

[No. 5/68]

C. No. IV(16) 38CE/68(II)]

R. PRASAD, Collector.

MINISTRY OF EDUCATION

(Cultural Activities Division I)

[CAI(I) Section]

ARCHAEOLOGY

New Delhi, the 21st May 1968

S.O. 1886.—Whereas by notification of the Government of India in the Ministry of Education No. S.O. 4288 dated the 23rd November, 1967, published in Part II, Section 3, sub-section (ii) of the Gazette of India dated the 9th December, 1967, the Central Government gave notice of its intention to declare the areas near or adjoining the protected monuments specified in the Schedule attached hereto as a prohibited area for purposes of construction;

And, whereas, no objections have been received to the making of such declaration;

Now, therefore, in exercise of the powers conferred by rule 31 of the Ancient Monuments and Archaeological Sites and Remains Rules 1959, the Central Government hereby declares the said area as a prohibited area.

THE SCHEDULE

State	District	Tehsil	Locality	Name of monument	Survey plot number to be declared as prohibited	Area	Owership	Details of modern structures if any, in the area to be declared as prohibited	Remarks
1	2	3	4	5	6	7	8	9	10
Madhya Pradesh	Raisen	Raisen	Sanchi	Buddihist Monument	Survey plot Nos. 111, 110/1, 101/1, 94/1/1, 101/2, 93/1, 92, 91, 90, 82/3/2, 102/1/1, 103/1, 68/3, 69, 70, 272/88/1, 88/2/1, 89, 87/3/1, (66, 67, 72/3/1/2, 62/1, 64 and (65, 37/3/1, 71/1).	44·79 acres	Government owned excepting survey plot Nos.(66-67, 72/3/1, 62/1, 64 and (65, 37/3/1, 71/1) which are privately owned.	Nil.	..

[No. F.4/8/67-CAI (1).]

S.O. 1887.—Whereas by notification of the Government of India in the Ministry of Education S.O. No. 49, dated the 27th December, 1967, published in Part II, Section 3, sub-section (ii) of the Gazette of India, dated the 6th January, 1968, the Central Government gave notice of its intention to declare the ancient monument specified in the Schedule below to be of national importance.

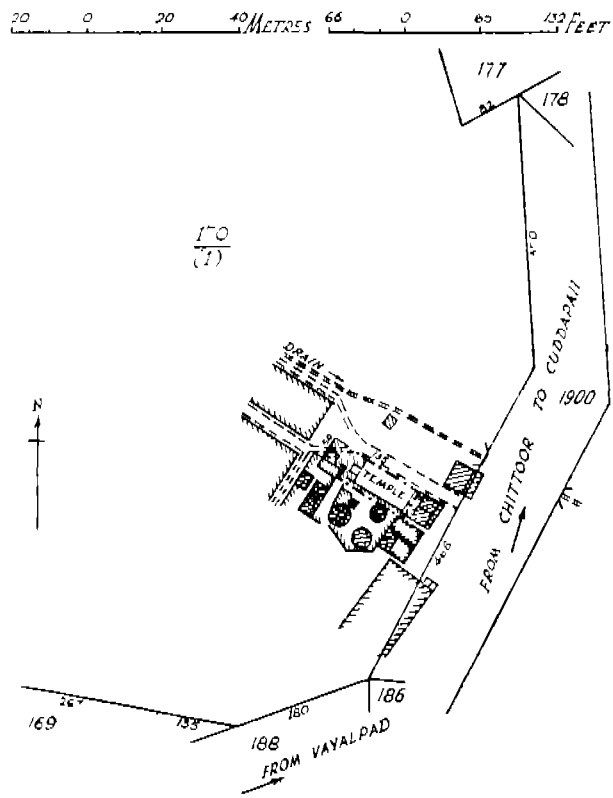
And whereas no objections have been received to the making of such declaration.

Now therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said ancient monument to be of national importance.

THE SCHEDULE

State	District	Taluk	Locality	Name of Monument	Revenue plot numbers to be included under protection	Area	Boundaries	Ownership	Remarks
1	2	3	4	5	6	7	8	9	10
Andhra Pradesh	Chittoor	Vayalpad	Kalakada	Palliswara Mudaiya Madeva temple together with adjacent area comprised in part of survey plot No. 170-1 as shown in the plan reproduced below.	Part of survey plot No. 170-1 as shown in the plan reproduced below.	·05 cent	*North* :— Remaining portion of survey plot No. 170-1 (public Street). *East* :— Remaining portion of survey plot No. 170-1 (village Chavadi). *South* :— Remaining portion of survey plot No. 170-1 (Government owned cattle pond). *West* :— Remaining portion of survey plot No. 170-1 (public street).	Government.	The temple is not in religious use.

SITE PLAN OF PALLISWARA MUDAIYA MADEVA TEMPLE AT KALAKADA



[No. F 4/9/67-CAI(I).]

S.O. 1888.—Whereas by notification of the Government of India in the Ministry of Education S.O. No. 50, dated the 27th December, 1967, published in Part II, Section 3, sub-section (ii) of the Gazette of India, dated the 6th January, 1968, the Central Government gave notice of its intention to declare the ancient monument specified in the Schedule below to be national importance.

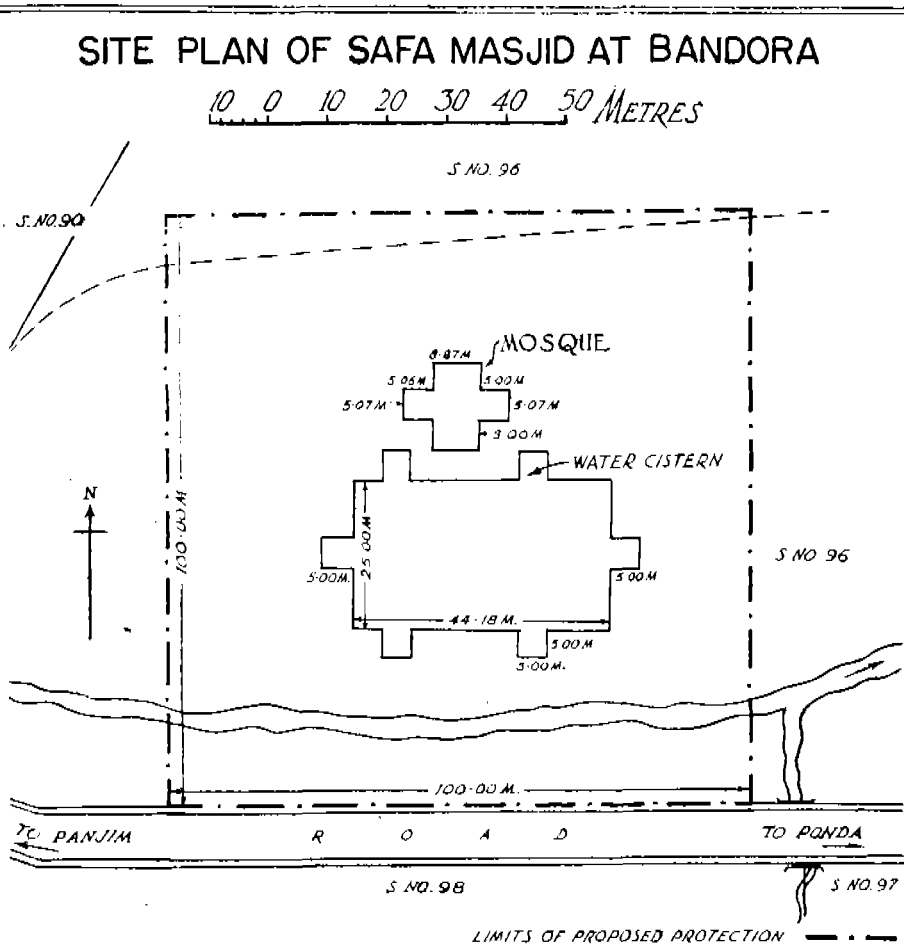
And whereas no objections have been received to the making of such declaration.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archæological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said ancient monument to be of national importance.

THE SCHEDULE

State	Dist	Tehsil	Locality	Name of Monument	Revenue plot numbers to be included under protection	Area	Boundaries	Owner-ship	Remarks
1	2	3	4	5	6	7	8	9	10
Goa	Goa	Ponda	Bandora	Safa Masjid with masonry tank and other structural remains.	Part of survey plot No. 96 as shown in the plan reproduced below.	10,000 Sq. mts.	*North* :— Remaining portion of survey plot No. 96. *East* :— Remaining portion of survey plot No. 96. *South* :— Road *West* :— Remaining portion of survey plot No. 96.	Private	

SITE PLAN OF SAFA MASJID AT BANDORA



[No. F.4/9/67-CAI(I)]

New Delhi, the 23rd May 1968

S.O. 1889.—Whereas by notification of the Government of India in the Ministry of Education S.O. No. 4399, dated the 24th November, 1967, published in Part II, Section 3, sub-section (ii) of the Gazette of India dated the 16th December, 1967, the Central Government gave notice of its intention to declare the ancient monuments specified in the Schedule below to be of national importance,

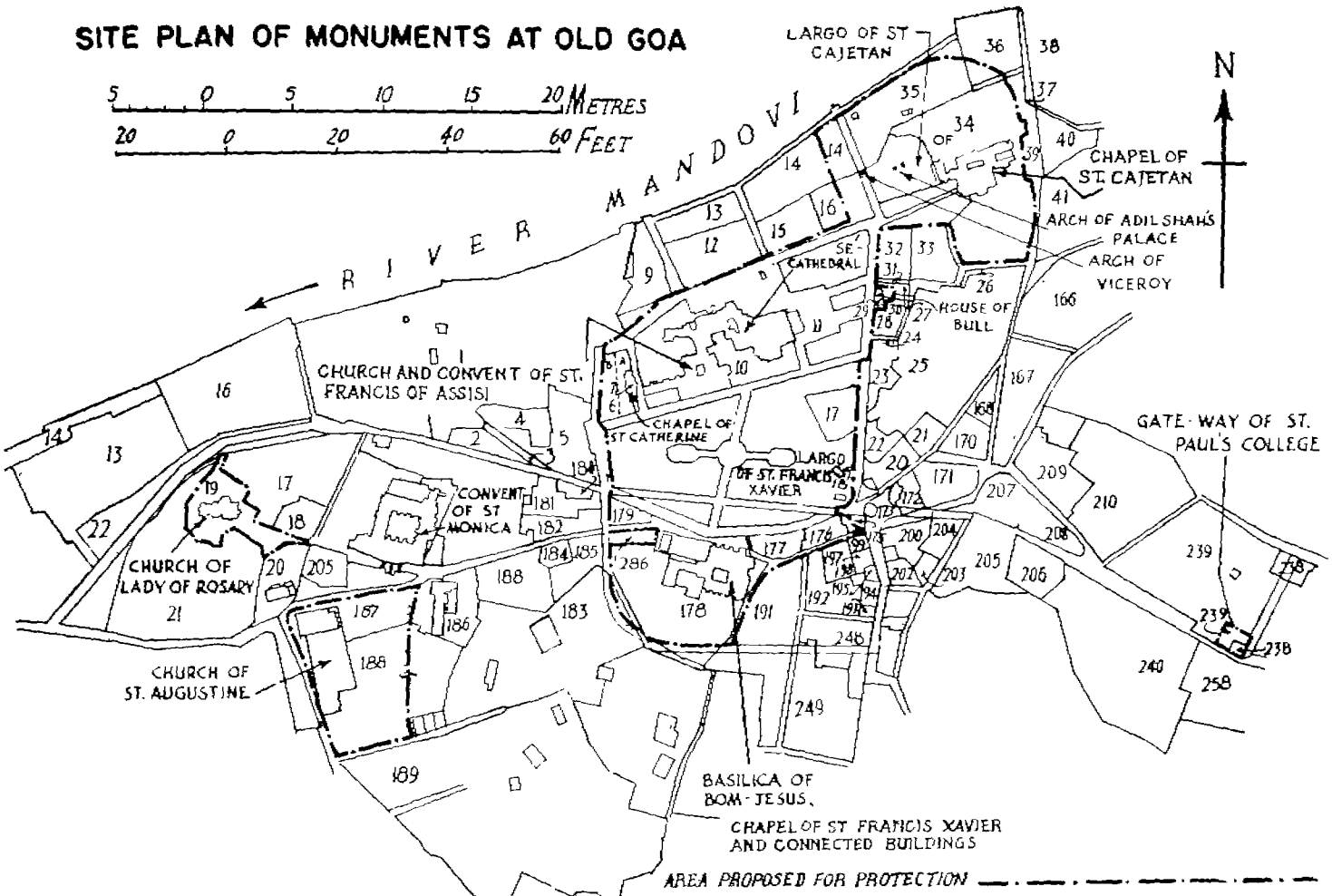
And whereas no objections have been received to the making of such declaration.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 4 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the Central Government hereby declares the said ancient monuments to be of national importance.

THE SCHEDULE

Sl. No.	Union Territory	District	Tehsil	Locality	Name of Monuments	Revenue plot numbers to be included under protection	Area	Boundaries	Ownership	Remarks
1	2	3	4	5	6	7	8	9	10	11
1.	Goa, Daman and Diu.	Goa	Ilha Goa	Velha Goa	Group of monuments namely:— (i) Se' Cathedral (ii) Church and Convent of St. Francis of Assisi (iii) Chapel of St. Catherin (iv) Chapel of St. Cajetan (v) Arch of Viceroy (vi) Arch of Adil Shah's Palace (vii) House of Bull (viii) Basilica of Bom Jesus (ix) Chapel of St. Francis Xavier and connected buildings (x) Largo of St. Francis Xavier. (xi) Largo of St. Cajetan; together with other minor monuments and adjacent area as shown in the plan reproduced below.	Survey plot Nos. 6A, 6B, 7, 10, 11, 17, 18, 29, 34, 176 177, part of survey plot Nos. 14, 16, 35, 36, 175, 178, 179, 183 and unnumbered survey plots including roads and adjoining open area as shown in the plan reproduced below.	242532·65 Sq. mts.	*North* :— Survey plot Nos. 9, 12, 15, remaining portion of survey plot Nos. 16, 14, 36 and River Mandovi. *East* :— Survey plot Nos. 39, 41, 25, 26, 33, 32, 31, 30, 28, 24, 23, public road and remaining portion of survey plot No. 175. *South* :— Survey plot Nos. 199, 197, 192, 191, and remaining portion of survey plot Nos. 178, 179 (now included in public road) and part of public road. *West* :— Part of public road and remaining portion of survey plot No. 183.	Survey plot Nos. 6A, 10, 11, 17, 18, 29, 34, 175, 176, 177, 178, 179, 183 and unnumbered survey plots including roads and adjoining space :— Government owned. Remaining under private ownership.	

2.	-do-	-do-	-do-	-do-	Church of St. Augustine together with adjacent land comprised in part of survey plot Nos. 187 and 188.	Part of survey plot Nos. 187 and 188 as shown in the plan reproduced below.	28560 sy. mtrs.	*North* :— Old road *East* :— Remaining portion of survey No. 187 and 188. *South* :— Road. *West* :—Road.	Government	Roads are not assigned any survey numbers.
3.	-do-	-do-	-do-	-do-	ortal remains of St. Paul's college together with adjacent land comprised in survey plot No. 238 and part of survey plot No. 239.	Survey plot No. 238 and part of survey plot No. 239 as shown in the plan reproduced below.	942 sq. mts.	*North*:— Remaining portion of survey plot No. 239. *East*:— Road. *South*:— Road *West*:— Remaining portion of survey plot No. 239.	Survey plot No. 239 private and remaining Govt. owned.	Roads are not assigned and survey numbers.
4.	-do-	-do-	-do-	Bangue-nim	Church of lady of Rosary together with adjacent area comprised in survey plot No. 19.	Survey plot No. 19.	7932 Sq. mts.	*North*:— Panjim road and survey plot No. 17. *East*:— Road and survey plot Nos. 17 and 18. *South*:— Survey plot Nos. 20 & 21. *West*:— Survey plot No. 21.	Trustees	..



[No. F. 4/11/67—CAI (I)]

MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND COOPERATION

(Department of Food)

New Delhi, the 9th May 1968

S.O. 1890.—In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order further to amend the Fruit Products Order, 1955, namely:—

1. This Order may be called the Fruit Products (Amendment) Order, 1968.

2. In the Fruit Products Order, 1955,

(1) for sub-clause (g) of clause 2, the following sub-clause shall be substituted, namely:—

"(g) Licensing Officer means the Executive Director, Food and Nutrition Board, Department of Food, Ministry of Food and Agriculture, Government of India and includes any other officer empowered in this behalf by him with the approval of the Central Government."

(2) in clause 3,

(i) in sub-clause (1), for the words 'which shall consist of the Licensing Officer who shall be the Chairman of the Committee', following shall be substituted, namely:—

"which shall consist of the Joint Secretary to the Government of India in the Department of Food, who shall be the Chairman of the Committee, the Licensing Officer, who shall be the Vice-Chairman of the Committee";

(ii) for item (j), under the heading Member-Secretary, the following shall be substituted, namely:—

"(j) the Senior Marketing Officer (Fruit Products) in the Department of Food.";

(iii) for sub-clause (6), the following sub-clause shall be substituted, namely:—

"(6)The function of the Committee shall be to advise the Department of Food in the Government of India on any matter pertaining to Fruit Preservation Industry,";

(3) In Form 'B';

(i) for the words 'Directorate of Marketing and Inspection', the following words shall be substituted, namely:—

"Department of Food (Food and Nutrition Board)";

(ii) for the words 'Agricultural Marketing Adviser to the Government of India', the following words shall be substituted, namely:—

"Executive Director (Food and Nutrition Board)".

[No. 7(3)/68-Tech.I.]

New Delhi, the 13th May 1968

S.O. 1891.—In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following Order further to amend the Cold Storage Order, 1964, namely:—

1. This Order may be called the Cold Storage (Amendment) Order, 1968.

2. In the Cold Storage Order, 1964,

(1) for sub-clause (d), of clause 2, the following sub-clause shall be substituted, namely:—

"(d) 'Licensing Officer' means the Executive Director, Food and Nutrition namely:—

"(d) 'Licensing Officer' means the Executive Director, Food and Nutrition Board, Department of Food, Ministry of Food, Agriculture, Community Development and Co-operation, Government of India, and

includes any other officer empowered by him in this behalf with the approval of the Central Government."

(2) In Form B—

for the words 'Directorate of Marketing & Inspection', the following words shall be substituted, namely:—

"Department of Food (Food and Nutrition Board)".

[No. 7(3)/68-Tech. I.]

R. BALASUBRAMANIAN, Jt. Secy.

(Department of Agriculture)

New Delhi, the 18th May 1968

S.O. 1892.—The following draft of Honey Grading and Marking Rules, 1968 which the Central Government proposes to make in exercise of the powers conferred by section 3 of the Agricultural Produce (Grading and Marking) Act, 1937 (1 of 1937) and in supersession of the Honey Grading and Marking Rules, 1955, is published as required by the said section, for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after 25th June, 1968.

Any objection or suggestion which may be received by the undersigned from any person with respect to the said draft before the aforesaid date will be considered by the Central Government.

Draft

HONEY GRADING AND MARKING RULES, 1968

1. **Short title and application.**—(1) These rules may be called the Honey Grading and Marking Rules, 1968.

(2) They shall apply to honey produced in India.

2. *Grade designations.*—The grade designations to indicate the quality of honey shall be as set out in column (1) of Schedule I.

3. *Definition of quality.*—The quality of honey as indicated by the grade designations shall be as set out against each designation in columns (2) to (10) of Schedule I.

3. *Grade designation mark.*—(1) The grade designatiton mark shall consist of a label, banderol or lid.

(2) The grade designation mark in the form of label or banderol shall conform to the design set out in Schedule II.

(3) The grade designation mark in the form of lids shall be a design approved by the Agricultural Marketing Adviser to the Government of India carrying the word 'Agmark', the grade of the honey and the number of the Certificate of Authorisation issued to the party under the General Grading and Marking Rules, 1937.

5. *Method of packing.*—(1) The honey shall be packed in clean glass containers (preferably wide mouthed) or china wares or new clean and lacquered cans or tins or wax impregnated paper cartons.

(2) All containers shall be securely closed and sealed in a manner approved by the Agricultural Marketing Adviser to the Government of India.

(3) The net weight of honey in a package shall be: 100 gm., 250 gm., 1 kg., 5 kg., 10 kg. and 25 kg.

Special permission of the Agricultural Marketing Adviser to the Government of India shall be necessary for packing in any other type or size of packing.

6. *Method of Marking.*—(1) A grade designation mark shall be securely affixed to each container in a manner approved by the Agricultural Marketing Adviser to the Government of India.

(2) In addition to the grade designation mark, the following particulars shall be clearly marked on the container, namely:—

(a) Name of the packer;

(b) Lot No to which the honey pertains;

(c) Date and place of packing; and

(d) Net weight.

7. *Special conditions for Certificate of Authorisation.*—In addition to the conditions specified in rule 4 of the General Grading and Marking Rules, 1937, the conditions set out in Schedule III shall be the conditions of every Certificate of Authorisation issued for the purpose of these rules.

SCHEDULE I

Grade Designation and Definition of Quality for Honey (See Rules 2 and 3)

Grade Designation	General characteristics	Colour	Specific gravity at 27°C (Min.)	Sucrose per cent (Max.)	Ash per cent (Max.)	Moisture per cent (Max.)	Total reducing sugars per cent (Min.)	Fructose-Glucose ratio (Min.)	Acidity-(calculated as formic acid) per cent maximum
1	2	3	4	5	6	7	8	9	10
Special .	It shall be the well-ripend natural product produced by domesticated bees in an apiary. It shall have been extracted with the help of a machine. It shall be free from objectionable flavour/aroma due to over-heating, fermentation and smoke. It shall have been strained clear through a double thickness of cheese cloth at a temperature not exceeding 60°C.	The colour shall be uniform through out and may vary from light to dark brown	1·400	5	0·5	20	65	1·00	0·2
Grade A .	It shall be the natural well-ripened product produced by honey bees. It shall be free from objectionable flavour/aroma due to over-heating, fermentation or smoke. It shall have been strained clear through a double thickness of cheese cloth at a temperature not exceeding 60°C.	Do.	1·400	5	0·5	22	65	0·90	0·2

Standard	It shall be the natural well-ripened product obtained from honey bees. It shall be free from objectionable flavour/aroma due to overheating, fermentation or smoke. It shall be free from suspended matter.	The colour shall be uniform throughout and may vary from light to dark brown.	1·400	10	0·5	25	60	0·90	0·2

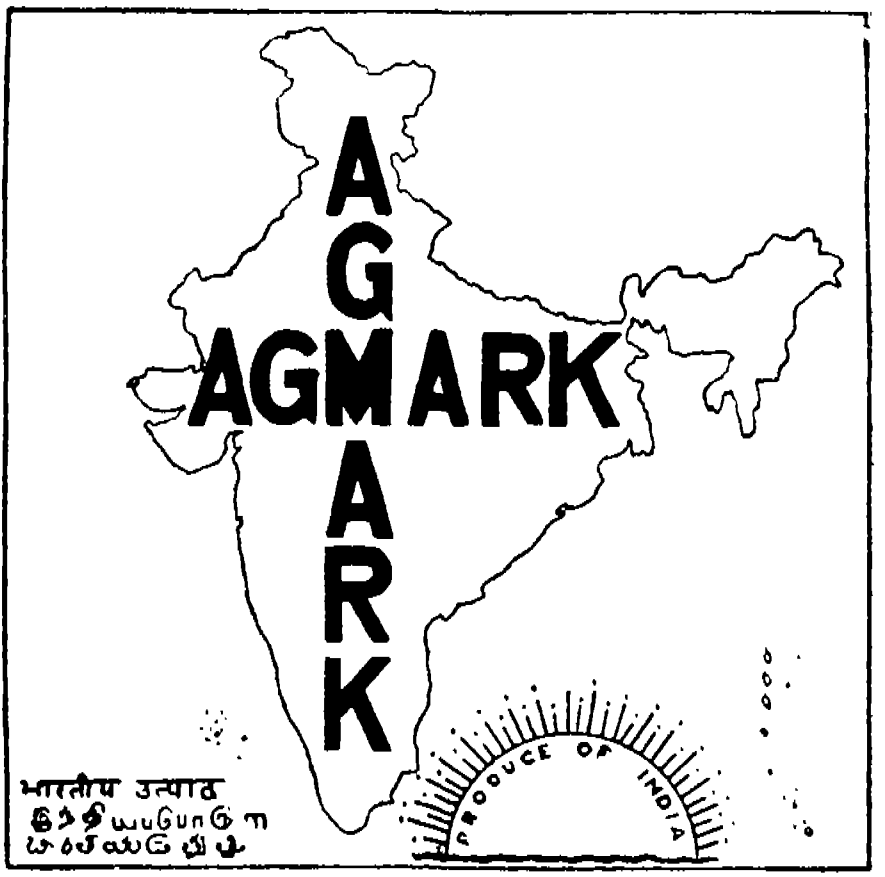
NOTE : 1. The honey shall be homogeneous before analysis. If granulated, it should be warmed and maintained at about 60°C until the crystals have dissolved.

2. Presence of commercial dextrine, starch and invert sugars shall be tested by perfomance of (*i*) Fiehe's test and (*ii*) Aniline chloride test. If both these tests show a positive reaction, the lot shall be rejected for grading.

SCHEDULE II

(*See* rule 4)

Grade designation mark (label and banderol) for honey



SCHEDULE III

Special conditions of Certificate of Authorisation

(*See* rule 7)

1. All honey to be graded shall be natural product and extracted hygienically.

2. The premises where honey shall be extracted and packed shall be clean and hygienic.

3. All workers shall be clean and free from contagious diseases.

4. An authorised packer shall make such arrangements for getting honey tested as may be prescribed by the Agricultural Marketing Adviser to the Government of India.

5. Duplicate samples from each lot of honey shall be forwarded to the Regional Agmark Laboratory or to such other laboratory as may be notified by the Agricultural Marketing Adviser to the Government of India.

6. All instructions regarding methods of sampling, analysis and packing and maintenance of record which may be issued by the Agricultural Marketing Adviser to the Government of India from time to time shall be strictly observed.

[No. F. 13-10/68-LA.]

CORRIGENDUM

New Delhi, the 18th May 1968

S.O. 1893.—In the notification of the Government of India in the Ministry of Food, Agriculture, Community Development and Co-operation (Department of Agriculture) No. S.O. 1205, dated the 31st March, 1967, and published, in the Gazette of India Part II, Section 3, Sub-section (ii), at pages 1290—1292,—

(a) at page 1290—

(i) in line 5, "Amendmen", *read* "Amendment";

(ii) in Note 2. *for* "more than per cent", *read* "more than 10 per cent";

(b) at page 1291, omit the last line;

(c) at page 1292,—

(i) in line 4, *for* "secd", *read* "seed";

(ii) in the Table, in column 4, *for* "seed-steams", *read* "seed-stems".

[No. F. 15-5/66-AM.]

V. S. NIGAM, Under Secy.

(Department of Agriculture)

New Delhi, the 24th May 1968

S.O. 1894.—Whereas the Central Government has, in pursuance of sub-section (1) of section 4 read with clause (h) of sub-section (1) of section 5 of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960) (hereinafter referred to as the said Act) nominated Smt. Rukmini Devi Arundale, Shri J. N. Mankar and Shri G. R. Rajagopaul, as members of the Animal Welfare Board with effect from the 19th March, 1968;

And, whereas the Andhra Pradesh Jeeva Raksha Sangham, Guntur, has in pursuance of clause (f) of sub-section (1) of section 5 of the said Act elected Shri Chaganraj Talesaraji, Treasurer, as its representative on the said Board;

And, whereas the Society of Prevention of Cruelty of Animals, Ahmedabad, has, in pursuance of clause (g) of sub-section (1) of section 5 of the said Act elected Shri Chandrakantbhai M. Jagabhaiwala, President of the Society, as its representative on the said **Board;**

Now, therefore, in pursuance of sub-section (1) of section 4 read with section 5 of the said Act, the Central Government hereby makes, with effect from the date of publication of this notification, the following further amendments to the notification of the Government of India in the Ministry of Food and Agriculture (Department of Agriculture) S.O. 921 dated the 20th March, 1962, namely:—

In the said notification,—

(a) against item 11, for the entry in the first column, the following entry shall be *substituted namely*:—

Shri Chaganraj Talesaraji, Treasurer, Andhra Pradesh Jeeva Raksha Sangham, P.B. No. 70, Guntur.

(b) against item 13, for the entry in the first column, the following entry shall be substituted namely:—

"Shri Chandrakantbhai M. Jagabhaiwala, President, Society for Prevention of Cruelty to Animals, Ahmedabad.

(c) against item 17, for the entry in the first column, the following entry shall be substituted namely:—

Shri G. Rajagopaul, Senior Advocate, E-99, Greater Kailash, New Delhi.

2. In pursuance of sub-section (3) of section 5 of the said Act, the Central Government hereby nominates Shrimati Rukmini Devi Arundale to be the Chairman of the said Board for a period of three years from the 19th March, 1968.

[No. 18-6/68-L.D. III.]

D. S. NIM, Dy. Secy.

MINISTRY OF STEEL, MINES AND METALS

(Department of Mines and Metals)

New Delhi, the 21st May 1968

S.O. 1895.—Whereas by the notification of the Government of India in the Late Ministry of Mines and Metals S.O. No. 3407 dated the 3rd November, 1966, under sub-section (I) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government gave notice of its intention to acquire the lands in the locality specified in the Schedule appended to that Notificaiton,

And whereas the competent authority in pursuance of section 8 of the said Act has made his report to the Central Government;

And whereas the Central Government after considering the report and after consulting the Government of Bihar is satisfied that the lands measuring 109.00 acres (approximately) or 44.15 hectares (approximately) described in Schedule appended hereto, should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the land measuring 109.00 acres (approximately) or 44.15 hectares (approximately) described in the said Schedule is hereby acquired.

The plans of the area covered by this Notification may be inspected in the Office of the Deputy Commissioner, Dhanbad (Bihar) or in the Office of the Coal Controller, 1, Council House Street, Calcutta or in the Office of the National Coal Development Corporation Limited (Revenue Section), Darbhanga House, Ranchi.

SCHEDULE

Singra Block — Drg. No. Rev/28/67
Jharia Coalfield — Dated 20-9-67

(showing lands acquired)

SUB-BLOCK 'A'

Sl. No.	Village	Thana	Thana number	District Area	Remarks
1.	Karitanr	Jharia	89	Dhanbad	Part
2.	Majhiladih or Jogidi	Jharia	91	Dhanbad	Part
3.	Bardubhi	Jharia	92	Dhanbad	Part

Total area : 109·00 Acres (approximately)
OR : 44·15 Hectares (approximately)

Plot numbers acquired in village Karitanr :

182 (P), 183 (P), 184 (P), 185 (P), 188 (P), 189 (P), 192 (P), 193 (P), 204 (P), 205 (P) 206 (P), 207 (P), 208, 209, 210, 211 (P), 212 (P), 213 to 249, 250(P), 251(P), 252(P), 253 to 296, 297 (P), 298 (P), 300(P), 328, 329(P).

Plot numbers acquired in village Majhiladih or Jogidi :

467(P), 468(P), 469(P), 500(P), 501(P), 507(P), 509(P), 510 to 518, 519(P), 520 to 523, 524(P), 525(P), 540(P), 541, 542(P), 545(P), 576(P), 577(P), 578(P), 589(P).

Plot numbers acquired in village Bardubhi :

363 (P), 364 (P), 365 (P), 366 (P), 605 (P), 787 (P), 788 (P), 789(P), 790(P), 792(P) 793 (P), 794(P), 795 (P), 796, 797, 798(P), 799, 800, 801(P), 802 to 809, 810(P), 814(P), 8815(P), 816(P), 817 to 871, 872(P), 873 to 888, 889(P), 890(P), 891(P), 892(P), 893(P) 98(P), 899(P), 900(P).

Boundary Description :

A-C-B-line passes through plot numbers 794, 605, 795, 366, 365, 364, 363, 801, 810, 872, 814, 815, 816 in village Bardubhi, through plot numbers 182, 184, 183, 185, 189, 188, 192, 212, 211, 193, 207, 206, 204, 205 in village Karitanr, through plot numbers 500, 501, 509, 507, 519, 469, 468, 467, 525, 524, 540, 542, 545, 576, 577, 578, 589, in village Majhiladih or Jogi li, again through plot numbers 297, 298 and 300, in village Karitanr and meet at point 'B'.

B-A-line passes through plot numbers 300, 252, 251, 250, 329 in village Karitanr, through plot numbers 900, 899, 898, 892, 893, 892, 891, 890, 889, 798, 787, 788, 789, 790, 789, 790, 792, 793 and 794 in village Bardubhi and meets at starting point 'A'.

[No. C2-20(5)/65.]

ERRATUM

New Delhi, the 21st May 1968

S.O. 1896.—In the Notification of the Government of India in the Ministry of Steel, Mines and Metals (Department of Mines and Metals) No. S.O. 2262, dated the 26th June, 1967, published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 8th July, 1967 at pages 2267 to 2270:—

1. At page 2269

In line 1, after "Boundary Description" for "A-B" read "A-C-B":

2. At page 2270.

In line 1, for "B-C-A" read "B-A".

[No. C-2-20(5)/65.]

M. S. K. RAMASWAMI, Dy. Secy.

औद्योगिक विकास तथा समवाय-कार्य मंत्रालय

(औद्योगिक विकास विभाग)

आदेश

नई दिल्ली, 23 अप्रैल 1968

एस० ओ० 1897.—जबकि भारत सरकार के भूतपूर्व वाणिज्य तथा उद्योग मंत्रालय के आदेश संख्या एस० ओ० 867 दिनांक 15 मई, 1958 के द्वारा, (जैसाकि बाद को संशोधित किया गया) जिसे भारत सरकार के भूतपूर्व वाणिज्य तथा उद्योग मंत्रालय के आदेश संख्या एस० ओ० 1216 दिनांक 25 अप्रैल, 1963 तथा भारत सरकार के भूतपूर्व उद्योग तथा संभरण मंत्रालय, उद्योग विभाग के आदेश संख्या एस० ओ० संख्या 1327 दिनांक 24 अप्रैल, 1965 तथा भारत सरकार के औद्योगिक विकास तथा समवाय-कार्य मंत्रालय, औद्योगिक विकास विभाग के आदेश संख्या एस० ओ० 1556 दिनांक 1 मई, 1967 के साथ पढ़ते हुए मैसर्स जैसप एण्ड कं० लिमिटेड, कलकत्ता नामक उपक्रम का प्रबन्ध उपर्युक्त प्रथम आदेश में उल्लिखित प्रबन्धक बोर्ड द्वारा उक्त अवधि तक के लिये जिसमें 14 मई, 1968 शामिल है, अपने हाथ मे ले लिया गया है ;

और जबकि केन्द्रीय सरकार की सम्मति यह है कि उपर्युक्त उपक्रम का प्रबन्ध प्रबन्धक बोर्ड के अधिकार में एक और वर्ष तक बना रहना लोकहित की दृष्टि से श्रेयस्कर होगा ;

अतः अब उद्योग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का 65) की धारा 18क की उप-धारा (2) के परन्तुक द्वारा प्रदत्त शक्तियों का उपयोग करते हुए केन्द्रीय सरकार एतद् द्वारा यह निदेश देती है कि सर्वप्रथम उल्लिखित आदेश, 15 मई, 1968 को सम्मिलित कर उस तारीख से एक और वर्ष की अवधि तक प्रभावी रहेगा ।

[सं० ई० आई० एम० 8(12)/65]

एन० एन० वांचू, सचिव ।

(औद्योगिक विकास विभाग)

आदेश

नई दिल्ली, 18 अप्रैल, 1968

एस० ओ० 1898.—उद्योग (विकास तथा विनियमन) अधिनियम, 1951 (1951 का 65) की धारा 6 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा विकास परिषदें (प्रक्रिया सम्बन्धी) नियम 1952 के नियम 5 (1) के साथ पढ़ते हुए केन्द्रीय सरकार एतद्द्वारा डा० यू० भट्टाचार्य, निदेशक, वस्त्र मशीनें वस्त्र आयुक्त का कार्यालय, बम्बई को, श्री आर० के० रक्षित, निदेशक, सर्वेक्षण (तकनीकी), वस्त्र आयुक्त का कार्यालय, बम्बई के स्थान पर 31 दिसम्बर, 1968 तक वस्त्र मशीन उद्योग की विकास परिषद का सदस्य-सचिव नियुक्त करती है, जिसका गठन भारत सरकार के उद्योग मंत्रालय के आदेश संख्या एस० ओ० 4030 दिनांक 31 दिसम्बर, 1966 के द्वारा वस्त्र मशीनों के निर्माण अथवा उत्पादन में लगे अनुसूचित उद्योगों के लिए किया गया था और यह निदेश देती है कि उपर्युक्त आदेश में निम्नलिखित संशोधन किया जाएगा ; अर्थात् :—

उपर्युक्त आदेश के क्रम सं० 8 तथा पैरा 3 में श्री आर० के० रक्षित के स्थान पर निम्नलिखित प्रविष्टि की जायेगी, अर्थात् :—

डा० यू० भट्टाचार्य

[सं० 2-9/67-एम०ई०आई०]

आई० वी० चुन्कत, अवर सचिव ।

(Department of Industrial Development)

ORDER

New Delhi, the 18th May 1968

S.O. 1899.—In exercise of the powers conferred by Section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) read with Rule 5(1) of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints, till the 30th December, 1968, Dr. U. Bhattacharya, Director, Textile Machinery, Office of the Textile Commissioner, Bombay as Member Secretary of the Development Council for Textile Machinery Industry *vice* Shri R. K. Rakshit,

Director, Survey (Technical), Office of the Textile Commissioner, Bombay, constituted by the Order of the Government of India in the Ministry of Industry No. S.O. 4030, dated the 31st December, 1966 for the scheduled industries engaged in the manufacture or production of Textile Machinery and directs that the following amendment shall be made in the said Order, namely:—

In the said Order, for Shri R. K. Rakshit occurring against S. No. 8 and in para 3, the following entry shall be substituted, namely:—

Dr. U. Bhattacharya.

[No. 2-9/67-MEI.]

I. V. CHUNKATH, Under Secy.

DEPARTMENT OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 21st May 1968

S.O. 1900.—In pursuance of para (a) of Section III of the Rule 434 of Indian Telegraph Rules 1951, as introduced by No. S.O. 627, dated 8th March, 1960, the Director-General, Posts and Telegraphs, hereby specified the 16th June, 1968 as the date on which the Measured Rate System will be introduced in Khandwa Telephone Exchange.

[No. F.5-46/68-PHB(2).]

D. R. BAHL,
Asstt. Director-General(PHB).

संचार विभाग

(डाक-तार बोर्ड)

नई दिल्ली, 21 मई 1968

एस० ओ० 1901—स्थायी आदेश क्रम संख्या 627, दिनांक 8 मार्च 1960 द्वारा लागू किये गए 1951 के भारतीय तार नियमों के नियम 434 के खण्ड III के पैरा (क) के अनुसार डाक-तार महानिदेशक ने खंडवा टेलीफोन केन्द्र में 16-6-68 से प्रमापित दर प्रणाली लागू करने का निश्चय किया है।

[सं० 5—46/68-पी० एच० बी० (2).]

डी० आर० बहल,

सहायक महानिदेशक (पी० एच० बी०)।

MINISTRY OF WORKS, HOUSING AND SUPPLY

(Department of Works and Housing)

New Delhi, the 23rd May 1968

S.O. 1902.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), and in suppression of the Notification of the Government of India in the late Ministry f Works and Housing No. S.O. 3945, dated the 16th December, 1965, the Central overnment hereby makes the following amendment to the Notification of the

Government of India in the late Ministry of Works, Housing and Supply S. O. No. 307, dated the 28th January, 1959, namely:—

In the Table show the said Notification for entries in columns 1 and 2 against serial number 4, the following shall be substituted, namely:

"4.	Director of Estates, Addl. Director of Estates, Deputy Directors of Estates and Assistant Director of Estates (Litigation), Govt. of India, New Delhi.	Premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government within the Union Territory of Delhi and within Simla and Faridabad (except such of them as are under the administrative control of other estate officers or as are in the Defence Pool)."

[No. F. 21012(5)/66-Pol.]

V. P. AGNIHOTRI, Dy. Secy.

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 20th May 1968

S.O. 1903—Whereas by a notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 1267 dated 26th March, 1968 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the power conferred by sub-section (1) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government, vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

State—Gujarat Distt.—Broach Taluka—Hansot

Village	S. No.	Hactor	Are.	P. Are.
Amod	77/1	0	4	45
Kharach	161	0	2	22
,,	164	0	17	13
,,	500	0	25	64

[No. 31/67/63-ONG/IOC(Vol. 7)(i)]

S.O. 1904.—Whereas by a notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 1268 dated 26th March, 1968 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the power conferred by sub-section (1) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government, vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

State—Gujarat Dist.—Surat Taluka—Olpad

Village	S. No.	Hector	Are.	P. Are.
Siyadla	134	0	13	15

[No. 31/67/63-ONG/IOC(Vol.7)(ii).]

S.O. 1905.—Whereas by a notification of the Government of India in the Ministry of Petroleum and Chemicals S.O. No. 1269 dated 26th March, 1968 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government declared its intention to acquire the Right of User in the ands specified in the scheduled appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has, under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of the Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the power conferred by sub-section (1) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government, vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

SCHEDULE

State—Gujarat Date—Broach Taluka—Ankleshwar

Village	S. No.	Hector	Are.	P. Are.
Piludra	176	0	8	85

[No. 31/67/63-ONG/IOC(Vol.7)(iii).]

R. N. CHOPRA, Under Secy.

MINISTRY OF TRANSPORT AND SHIPPING

(Transport Wing)

(MERCHANT SHIPPING)

New Delhi, the 20th May 1968

S.O. 1906.—In exercise of the powers conferred by rule 5 of the Indian Merchant Shipping (Seamen's Employment Office, Bombay) Rules, 1954, the Central Government hereby appoints Capt. G. W. Thompson as a member of the

Seamen's Employment Office (Foreign-going) at the Port of Bombay to represent Shipowners *vice* Capt. J. M. W. Robinson and makes the following amendment in the notification of the Government of India in the Ministry of Transport and Shipping (Transport Wing) No. S.O. 41, dated the 22nd December, 1967, namely:—

In the said notification, under the heading "Members' representing Shipowners", for the entry against Serial No. 8, the entry "Capt. G. W. Thompson" shall be substituted.

[No. 15-MT(6)/67.]

B. B. LAL, Under Secy.

MINISTRY OF HEALTH, FAMILY PLANNING AND URBAN DEVELOPMENT DEVELOPMENT

(Department of Health and Urban Development)

New Delhi, the 24th May 1968

S.O. 1907.—The following draft of rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections, for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1968.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules 1968.

2. In Schedule A to the Drugs and Cosmetics Rules, 1945,—

(i) in Form 20-B, in the proviso to paragraph (ii) of condition 3,—

(a) in clause (b), the word 'or' shall be added at the end;

(b) after clause (b), the following clause shall be added, namely:—

"(c) a manufacturer of bevarages, confectionary, biscuits and other non-medicinal products, where such drugs are required for processing these products.";

(ii) in Form 21-B, in the proviso to paragraph (ii) of condition 4,—

(a) in clause (b), the word 'or' shall be added at the end;

(b) after clause (b), the following clause shall be added, namely:—

"(c) a manufacturer of hydrogenated vegetable oils, beverages, confectionary and other non-medicinal products, where such drugs are required for processing these products."

[No. F. 1-10/66-D.]

S.O. 1908.—The following draft of rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published as required by the said sections for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1968.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1968.

In Schedule M to the Drugs and Cosmetics Rules, 1945, the existing "Note" at the end shall be renumbered as Note 'I' and the following Note II shall be inserted after Note I as so numbered, namely:—

"Note II. Schedule M gives broad categories of drugs, equipments and space required for the manufacture of each such category of drugs. There are, in addition, other categories of drugs such as basic drugs, miscellaneous pharmaceuticals such as Ferri et Ammonli Citras, Potassium Citras, Glycerin Paraffin, Vaseline, Oxygen gas capsules, surgical cotton and tinctures etc., which are not listed in this Schedule. The licensing authority shall, in respect of such categories of drugs, have the discretion to examine the adequacy or otherwise of factory premises, space, plant, machinery and other requisites, having regard to the nature and extent of the manufacturing operations involved and direct the manufacturer to carry out necessary modifications in them and on modifications having been made approve of the manufacture of such categories of drugs. Any drug so permitted to be manufactured by the licensing authority shall be deemed to be an additional category of drug for the purpose of this Schedule and sub-rule (5) of rule 69."

[No.F. 1-6/66-D.]

S.O. 1909.—The following draft of the rules further to amend the Drugs and Cosmetics Rules, 1945, which the Central Government proposes to make, after consultation with the Drugs Technical Advisory Board, in exercise of the powers conferred by sections 12 and 33 of the Drugs and Cosmetics Act, 1940 (23 of 1940), is published, as required by the said sections for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 20th August, 1968.

2. Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be considered by the Central Government:—

Draft Rules

1. These rules may be called the Drugs and Cosmetics (Amendment) Rules, 1968.

2. In the Drugs and Cosmetics Rules, 1945, in rule 65, after sub-rule (17), the following sub-rule shall be inserted namely:—

"(18) No drug intended for distribution to the medical profession as free sample which bears a label on the container as specified in clause (viii) of rule 96, and no drug meant for consumption by the Employees' State Insurance Corporation, the Central Government Health Scheme, the Government Medical Stores Depots, the Armed Forces Medical Stores or other Government institutions, which bears a distinguishing mark on the drug or on the label affixed to the container thereof indicating this purpose, shall be stocked by the licensee on his premises."

[No. F. 1-3/66-D.]

S. N. VARMA, Dy. Secy.

MINISTRY OF COMMERCE

CARDAMOM CONTROL

New Delhi, the 25th May 1968

S.O. 1910.—In pursuance of clause (c) of sub-section (3) of section 4 of the Cardamom Act, 1965 (42 of 1965), the Central Government hereby notifies that Shri Kotah Punnaiah, Member of Rajya Sabha, has been elected by the Rajya Sabha as member of the Cardamom Board for the period ending 14th April, 1969 or for so long as he continues to be Member of the Rajya Sabha, whichever is less.

[No. 29(21) Plant (B)./64.]

TEA CONTROL

New Delhi, the 25th May 1968

S.O. 1911.—In exercise of the powers conferred by section 4 of the Tea Act, 1953 (29 of 1953), read with rules 4 and 5 of the Tea Rules, 1954, the Central Government hereby appoints Mr. C. J. N. Will as a member of the Tea Board until 31st March, 1969, in the vacancy caused by the resignation of Mr. D. B. Wallace, and makes the following further amendment in the notification of the Government of India in the Ministry of Commerce S.O. 1143 dated the 6th April, 1966, namely:—

In the said notification, for entry 8, the following entry shall be substituted, namely:—

"8. Mr. C. J. N. Will, Chairman, Indian Tea Association, Calcutta-1.	Representing owners of tea estates and gardens and growers of tea".

[No. 7(2)-Plant(A)/65.]

B. KRISHNAMURTHY, Under Secy.

ORDER

New Delhi, the 27th April 1968

S.O. 1912.—In exercise of the powers conferred by section 18A, read with sub-section (4) of section 18B and sub-section (1) of section 25, of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and in modification of the Order of the Government of India in the Ministry of Commerce, No. S.O. 498, dated the 11th February, 1966, as amended by the Order of the Government of India in the Ministry of Commerce, No. S.O. 2130, dated the 12th July, 1966, the Central Government hereby authorises Messrs. Deepchand Golcha and Brothers of Rajnandgaon, *vice* Shri Dinkar Kedarnath, to take over with immediate effect the management of the whole of the New Bhopal Textile Mills Limited, Bhopal (hereinafter referred to as the undertaking) and appoints the said Messrs. Deepchand Golcha and Brothers as the managing agents of the undertaking (hereinafter referred to as the managing agents) subject to the following terms and conditions, namely :—

(1) the managing agents shall be responsible for restarting and running the undertaking;

(2) (a) the managing agents shall, without any remuneration,—

(i) provide from out of their own resources the entire working capital required for running the undertaking, and

(ii) arrange for the finances, required for restarting and running the undertaking;

(b) the managing agents shall be paid interest in respect of the sums mentioned in clause (a) at such rate, not exceeding 10 per cent per annum, as may be determined by the Government of Madhya Pradesh, with the previous approval of the Central Government, keeping in view the rates of interest charged by scheduled banks and industrial financial institutions.

(3) the managing agents shall be responsible,—

(i) for restarting and running the undertaking to full capacity, or

(ii) for restarting and running the undertaking to such lower capacity, or

(iii) for restoring the undertaking to such level of its capacity,

as may be approved by the Government of Madhya Pradesh;

(4) the managing agents shall formulate a scheme for the rehabilitation and modernisation of the undertaking (including replacements of the machinery) and implement such scheme with the previous approval of the Government of Madhya Pradesh subject to such modifications as may be made in such scheme by that Government;

(5) the managing agents shall not incur any liabilities on the assets of the undertaking by way of mortgage or other encumbrance without the previous approval of the Government of Madhya Pradesh;

(6) the managing agents shall, immediately after the close of every financial year, submit to the Government of Madhya Pradesh the duly audited annual balance-sheet, and profit and loss account, pertaining to the undertaking;

(7) the managing agents shall submit to the Government of Madhya Pradesh such reports and returns as may be specified by that Government;

(8) the managing agents shall ensure that in respect of employment in the undertaking priority is given to the ex-employees thereof;

(9) (a) the managing agents shall carry out such directions as may be given to them by the Central Government;

(b) the Government of Madhya Pradesh may, in relation to any matter in respect of which no direction has been given by the Central Government, also give directions to the managing agents;

Provided that any direction so given shall, to the extent it is inconsistent with any direction given by the Central Government, be void;

(10) the managing agents shall, for managing the business of the undertaking, be entitled to such remuneration as may be fixed by the Central Government after consultation with the Government of Madhya Pradesh;

(11) save as otherwise provided in this Order, the managing agents shall, in managing the business of the undertaking, be governed by the provisions of the Companies Act, 1956 (1 of 1956).

2. This Order shall be in force for a period of nine months from the date of its publication in the Official Gazette.

[No. 2(11)TEX(B)/65(G).]

H. K. BANSAL, Dy. Secy.

(Office of the Joint Chief Controller of Imports and Exports)

(Central Licensing Area)

ORDERS

New Delhi, the 23rd April 1968

S.O. 1913.—A licence No. P/EI/0159865/TIR/25/CD/25/NQQ/*Ad-hoc*, dated 11th December 1967 of the value of Rs. 4,200 for import of Dry Fruits from Iran was issued to M/s. Lala Ji Ki Gali Shramik Theka Sahkari Samiti Dig (Bharatpur) C/o Pandit Bramanand Dharam Shastri, 3745, Gali Barna, Sadar Bazar, Delhi.

2. Thereafter, a show cause notice No. 21(a)(ii)-IV/775/Iran/AS.67/I.S./CLA/537, dated 23rd March 1968 was issued asking them to show cause within 10 days as to why the said licence in their favour should not be cancelled on the ground that Asstt. Registrar of Co-operative Societies, Bharatpur have reported that the certificate No. 72 dated 28th September 1967 was not issued by them.

3. In response to the aforesaid show cause notice, M/s. Lala Ji Ki Gali Shramik Theka Sahkari Samiti, Dig Bharatpur C/o Pandit Brahmanand Dharam Shastri, 3745, Gali Barna Sadar Bazar, Delhi had by their letter dated 3rd April 1968 furnished a detailed explanation and stated that the certificate in question was issued by the office of the Asstt. Registrar of Co-operative Societies, Bharatpur.

4. The undersigned has carefully examined the said representation and has come to the conclusion that the words, "the aforesaid society is dealing with fresh fruits, Dry Fruits and dates and vegetables since its inception" were not mentioned in the said certificate by his office as reported by the Registrar Co-operative Societies, Jaipur.

5. Having regard to what has been stated in the preceding paragraph the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers

vested in him under Clause 9 sub-clause (a) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/EI/0159865/TIR/25/CD/25/NQQ/Ad hoc, dated 11th December 1967 for Rs. 4,200 issued in favour of M/s. Lalji Ki Gali Sharamik Theka Sahkari Samiti, Dig (Bharatpur) C/o Pandit Brahmanand Dharam Shastri, 3745, Gali Barna, Sadar Bazar, Delhi.

[No. 21(a)(ii)/IV/775/Iran/A.S.67/I.S/CLA.]

New Delhi, the 1st May 1968

S.O. 1914.—Messrs. Friends United Co., 11-12-13A, Bhagirath Palace, Chandni Chowk, Delhi were granted an Established Importers Licence No. P/EI/0157513/C/XX/25-26/C.D./25-26, dated 19th July, 1967 for Rs. 3232/- for the import of "Books and Periodicals subject to remarks in the Red Book" for A.M. 68 licensing period. They have applied for the Duplicate Exchange Control Copy of the said licence on the ground that the Exchange Control Copy has been lost or misplaced. It is further stated by the firm that the original exchange control copy of the licence has not been utilised.

In support of this declaration, the applicant has filed an affidavit duly attested by Oath Commissioner stating that the original exchange control copy of the licence has been lost or misplaced.

I am satisfied that Exchange Control Copy of the said licence No. P/EI/0157513/C/XX/25-26/C.D./25-26, dated 19th July, 1967 has been lost and direct that Duplicate Exchange Control Copy should be issued to the applicant. The original Exchange Control Copy of the licence is cancelled.

[No. Books/54/AM./68/QL/CLA/324.]

New Delhi, the 9th May 1968

S.O. 1915.—Messrs Bharat Industries, O-11, Industrial Area, Jamuna Nagar, were granted licence No. P/SS/1608090, dated 17th October, 1967, for Rs. 13,646/- for the import of Nichrome Wire, Thermostat Control, German Silver Scraps, Graphite Crucibles above 100 Nos. Flashers Brass Pipe of 1/4" and Small Dia and Time Switches falling under S. No. 45(d)/ii, 78/(IX)/V, 11/II, 26/II/,46/I and 78/V, respectively for Rs. 13,646/- only. They have applied for the issue of duplicate of Customs/Exchange Control copies thereof, on the ground that the original copies of the licence have been lost or misplaced. This licence has not been utilised.

2. The applicant have filled an affidavit in support of their contention, as required under Para 264 read with Appendix 7 of the I.T.C., Hand Book of Rules and Procedure, 1967. I am satisfied, the original Customs/Exchange Copies of this licence have been lost or misplaced.

3. In exercise of the powers conferred on me under section 9(CC) Imports (Control) Orders, 1955 dated 7th December, 1955, I order the cancellation of the Customs Purposes and Exchange Control Copies of the Import Licence No. P/SS/1608090, dated 17th October, 1967.

4. The applicant is now being issued duplicate copies of the Customs/Exchange Control Copies of the licence ,in accordance with the provisions of Para 264(1), I.T.C., Hand Book of Rules and Procedure, 1967.

[No. B-6|AM.68|AU-HRH|CLA|759.]

S.O. 1916.—Messrs Group Industries, Hathi Babu Ka Bagh, Jaipur were granted licence No. P/SS/1507305/C/XX/23/CD/23 24, dated 17th August, 1966, for the import of Porcelain Parts, Leather Sid Paper, Perspan paper, etc., for Rs. 38,000/- only. They have applied for the issue of a duplicate of Exchange Control Copy thereof, on the ground that the original copy (Exchange Control) of the licence has been lost/misplaced. The licence was utilised to the extent of Rs 21,150/- and duplicate now required to cover the balance amount of Rs. 16,850/-.

The applicant has filed an affidavit in support of their contention, as required under Para 264 read with Appendix 7 of the I.T.C. Hand Book of Rules and Procedure, 1967. I am satisfied, the original licence (Exchange Control Copy) has been lost/misplaced.

In exercise of the powers conferred on me under section 9(CC) Imports (Control) Order, 1955, dated 7th Decemper, 1955, I order the cancellation of

Exchange Control Copy of Import Licence No. P/SS/1507305/C/XX/23/CD/23-24, 17th August, 1966.

The applicant is now being issued duplicate Exchange Control copy of the said licence, in accordance with the provision of para 264(1), I.T.C., Hand Book of Rules & Procedure, 1967.

[No. F. PN 84/66/G-4/Raj/AM.67/AU-HRH/CLA/761.]

J. S. BEDI,

Joint Chief Controller of Imports and Exports.

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 16th May, 1968

S.O. 1917.—Messrs. The Indo-Swiss Synthetic Gem Manufacturing Co. Ltd., Mettupalayam, were granted an import licence No. P|RM|2157266|C, dated 28th February, 1967 for Rs. 50,000 (fifty thousands only). They have applied for the issue of duplicate Customs Copy of the said licence on the ground that the original has been lost. It is further stated that the original copy has not been registered with any Customs Authorities or with any Bank.

In support of this contention, the applicant have filed an affidavit. I am accordingly satisfied that the original Customs Copy of the said licence has been lost. Therefore, in exercise of the powers conferred under sub-clause 9(CC) of the Import (Control) Order 1955, dated 7th December 1955, as amended the said licence No. P|RM|2157266|C, dated 28th February 1967, issued to Messrs The Indo-Swiss Synthetic Gem Manufacturing Co. Ltd., Mettupalayam, is hereby cancelled.

3. Duplicate copy for Customs Purposes of the said licence is being issued separately to the licensee.

[No. Glass-1 (38)/AM-67/RM. 3/296.]

P. C. VERMA,

Dy. Chief Controller of Imports and Exports.

(Office of the Deputy Chief Controller of Imports and Exports)
Panjim-Goa

ORDER

Panjim, 16th May 1968

SUBJECT:—Order for cancellation of Exchange Control Purposes copy of licence No. P/EI/0139193 C/XX/25/C/G/25-26 dated 29th July 1967 for Rs. 30,967/- issued in favour of M/s. Chowgule & Co. Pvt. Ltd., Marmagoa Harbour, Goa.

S.O. 1918.—Messrs Chowgule & Co. Pvt. Ltd., Marmagoa were granted an import licence No. P|EI|0139193, dated 29th July, 1967 for Rs. 30,967|- for import of motor vehicle parts for the licensing period April 1967/March 1968 from General Area. They have applied for duplicate copy of Exchange Control Purposes of the above mentioned licence for unutilised balance of Rs. 26,244|- on the ground that the original exchange control purposes copy of the licence has been lost.

In support of this contention the applicant has filed an affidavit on stamped paper duly attested. I am satisfied that the original exchange control copy of licence No. P/EI/0139193 dated 29th July 1967 has been lost and direct that the duplicate exchange control purposes copy of licence should be issued to the applicant. The original exchange control copy of licence No. P/EI/0139193 dated 29th July 1967 is cancelled.

[No. F. EI|223-95-97-IV|42|AM68.]

R. D. PAWAR,

Dy. Chief Controller of Imps. & Exps.

(Office of the Chief Controller of Imports and Exports)

ORDER

New Delhi, the 23rd May 1968

S.O. 1919.—M/s. Avery Cycle Industries G.T. Road, Miller Ganj, Ludhiana (Punjab) were granted an import licence No. P/CG/2049137/KL.IV/25/C/H/24, dated 1st June 1967 for Rs. 9.02,475 (Rupees Nine lakhs, two thousand, four hundred and seventy-five only). They have applied for the issue of a duplicate Customs Purposes copy of the said licence on the ground that the original Customs Purposes copy has been lost/misplaced. It is further stated that the original Customs Purpose Copy was not registered with any Customs authority and not utilised at all.

2. In support of this contention, the applicant has filed an affidavit. I am accordingly satisfied that the original Customs Purposes copy of the said licence has been lost. Therefore, in exercise of the powers conferred under Sub-clause 9(cc) of the Imports (Control) Order 1955 dated 7th December, 1955 as amended, the said original Customs Purposes copy of licence No. P/CG/2049137/KL IV/25/C/H/24 dated 1st June, 1967 issued to M/s. Avery Cycle Industries, Ludhiana is hereby cancelled.

3. A duplicate Customs Purposes copy of the said licence is being issued separately to the licencee.

[No. CG.I/7(9)/67-68.]

Y. J. DENNISON,

Dy. Chief Controller of Imports & Exports.

MINISTRY OF LABOUR EMPLOYMENT & REHABILITATION

(Department of Labour & Employment)

New Delhi, the 21st May 1968

S.O. 1920.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Hyderabad in the matter of an application under Section 33A of the said Act from Kokkula Chandroo and 37 other workmen of Singareni Collieries Company Limited, Post Office Kothagudium Collieries, which was received by the Central Government on the 13th May, 1968.

BEFORE THE INDUSTRIAL TRIBUNAL, ANDHRA PRADESH, HYDERABAD.

PRESENT:

Shri Mohammad Najmuddin, M.A., B.L., Chairman, Industrial Tribunal, Andhra Pradesh, Hyderabad.

MISCELLANEOUS PETITION NO. 154 OF 1967.

In

INDUSTRIAL DISPUTE NO. 30 OF 1967.

BETWEEN:

1. Kokkula Chandroo.
2. Sheik Imam.
3. Silkala Chandroo.
4. Pittala Balaiah.
5. Badrap Ramaiah.
6. Rodda Laxmaiah.
7. Ellala Beemaiah.
8. Daggula Rajanarsoo.
9. Aitha Sivaram.
10. Tangula Lingaiah.
11. Buyyala Bucham.
12. Sagarla Chandroo.
13. Bandari Chandraiah.
14. Sogala Rajanarsoo.
15. Jangam Mallaiah.

16. Rangu Ramakishtu.
17. Meenugu Rajam.
18. Adikoppula Mallaiah.
19. Gosikala Nagaiah.
20. Adluri Mallaiah.
21. Goriga Rajam.
22. Bandari Lingaiah.
23. P. John.
24. Mohunapalli Odelu.
25. Ippa Bumaiah.
26. Poredi Lingaiah.
27. Palle Rajam.
28. Adikoppula Rajalingu.
29. Byri Ramaiah.
30. Duggala Rajam.
31. Aitha China Ramaiah.
32. Enumula Posham.
33. Gundarapu Posham.
34. Kandula Ramulu.
35. Kasi Enkaty.
36. Bandari Rajam.
37. Barla Rajam, and
38. Gosikala Lingaiah.—*Complainant-Petitioners.*

AND

The General Manager, The Singareni Collieries Co., Ltd., Kothagudium Collieries.—*Opposite Party.*

APPEARANCES:

Messrs. V. G. Doraiswamy and S.V.R.S. Somayajulu—*for the Complainant-petitioners*

Messrs. K. Srinivasamurthy and M. V. Ramakrishna Rao—*for the Opposite party.*

AWARD

This application is under Section 33A of the Industrial Disputes Act. There are 38 applicant in this application. They are coal cutters in the employ of the respondent Company in its Tandur Division. These coal cutters were piecerateres. Following the recommendations of the Wage Board on Coal Mining Industry, the Company and the Tandur Coal Mines Labour Union entered into a settlement in the presence of the Conciliation Officer whereby it was agreed that the coal cutters would be converted from piece-raters into time-raters. That settlement is dated 14th December, 1967. That settlement was under Section 12(3) of the Industrial Disputes Act because it was entered into in the course of conciliation proceedings. Even prior to the date of settlement the Management had issued notice under Section 9A of the Industrial Disputes Act intimating that they proposed to change the piece-raters into time-raters. This change came into effect from 25th November, 1967. Now the applicants complain that this change had changed their conditions of service. It is stated that this conversion has detrimentally affected their emoluments. The prayer is that the Tribunal may decide the complaint and "pass such order or orders thereon as it may deem fit and proper". Although not stated specifically as such, the prayer should be presumed to be that the applicants want the *status quo* to be restored and their condition of service as piece-raters to be continued.

2. The Management filed counter to say that there is no basis for the complaint because the change that was effected was on the basis of the settlement under section 12(3) of the I.D. Act, and that it binds all the workmen in the Establishment as provided under Section 18(3)(d) of the said Act. It is therefore pointed out that there was no violation of the provisions of section 33.

3. The applicants are represented by Mr. V. G. Doraiswamy who states that he is the provisional President of a Union calling itself Singareni Collieries Labour Congress at Bellampalli. Mr. Doraiswamy says that it came into existence in the month of January this year and that it is yet to be registered. Mr. S. V. R. S. Somayajulu, Advocate, argued for the workmen and Mr. K. Srinivasmurthy argued for the Management. When this conversion from piece-raters to time-raters was made, I.D. No. 30/67 was, and is still, pending. The dispute in it is in respect of, among others, general wage structure. The applicants are

therefore concerned with that dispute. Even so, the question is whether in that the change from piece-raters to time-raters had been effected in respect of the coal cutters, the Management had in any way contravened the provisions of Section 33. My answer to this question is in the negative. As I have already pointed out the settlement dated 14th December, 1967, is under Section 12(3) of the I.D. Act. It had been entered into during the conciliation proceedings. The Tandur Coal Mines Labour Union which entered into that settlement with the Management is not only a registered under but also a recognised union. In its turn the settlement is based upon the recommendations of the Wage Board which recommended that the coal cutters should be fitted into Category IV with time-rated emoluments. When such is the position, I do not see how it can be said that the Management had in any way violated the provisions of section 33. It is based upon a solemn settlement under section 12(3) of the I.D. Act. There is no basis for the complaint made in this application.

4. In the circumstances of the case, there is no relief to be granted because there is no basis for the complaint in this application under Section 33A. It is therefore rejected.

Award passed accordingly.

Given under my hand and the seal of the Tribunal, this the 6th day of May, 1968.

Sd./- M. NAJMUDDIN,
Industrial Tribunal.

[No. 7/21/67-LRII.]

New Delhi, the 22nd May 1968

S.O. 1921.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Jamadoba Colliery of Messrs Tata Iron and Steel Company Limited, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 18th May, 1968.

BEBFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, (NO. 1), DHANBAD.

In the matter of a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 66 OF 1967

PARTIES

Employers in relation to the Jamadoba Colliery of Messrs Tata Iron and Steel Co., Ltd., P.O. Jealgora, Dist., Dhanbad.

AND

Their workmen.

PRESENT:

Shri Kamla Sahai.—*Presiding Officer.*

APPEARANCES:

For the employers.—Shri L. H. Parvatiyar, Legal Assistant.

For the Workmen.—Shri H. N. Singh, Vice-President, Koyla Mazdoor Panchayat, P.O. Jharia, (Dhanbad).

STATE: Bihar. INDUSTRY: Coal.

Dhanbad, dated, the 8th April, 1968

AWARD

By order No. 2/61/66-LRII dated the 27th March, 1967, the Central Government referred the dispute to this Tribunal for adjudication. By the Government's Order No. 8/25/67-LRII dated the 16th September, 1967, the reference was transferred to the Tribunal at Jabalpur. By Order No. 8/25/67-LRII dated the 24th November 1967, the dispute has again been transferred to this Tribunal. It has

been numbered as Reference No. 66 of 1967. The Schedule attached to the reference is as follows:—

SCHEDULE

"Whether the management of Jamadoba Colliery of Tata Iron and Steel Company, Post Office, Jealgora, District Dhanbad, was justified in discharging Shri Chintaman from service with effect from the 31st March, 1965 and thereafter taking him back in employment with effect from the 16th September, 1965 by treating the period of idleness from the 14th December 1964 to 15th September 1965 as *Dies-Non* for purposes of Wages?

If not, to what relief is the workman entitled?"

2. The workman has got his salary. His continuity of service has not been lost. The only question is whether he is entitled to his pay and allowances with effect from the 31st March 1965 to the 15th September, 1965. The total amount which is thus in question is about Rs. 700 as stated by the parties. They have come to terms and have filed a compromise petition whereby the employers have agreed to pay a sum of Rs. 400 in full settlement of the claim for salary and allowances for the aforesaid period to the workman, Shri Chintaman. I think that the compromise is very fair and I, therefore accept it.

3. Let the reference be disposed of in terms of the compromise which will form part of the award. This award may now be submitted to the Central Government under Section 15 of the Industrial Dispute Act, 1947.

(Sd.) KAMLA SAHAI,
Presiding Officer.

Central Government Industrial Tribunal-*Cum*-Labour,
Court, (No. 11, Dhanbad.

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NO. 1, DHANBAD.

REFERENCE NO. 66 OF 1967

PARTIES:

Employers in relation to M/s. Tata Iron and Steel Co., Ltd., Jamadoba, P.O. Jealgora, Dhanbad.

AND

Their workman (Shri Chintaman)

The employers above named beg to submit as under:—

That the Hon'ble Tribunal had made suggestion on 27th March, 1968 to settle the dispute by paying an *ex-gratia* payment of Rs. 600 to the workman on the basis that total amount involved in the dispute was Rs. 1,100 for the period from 14th December, 1964, to 15th September, 1965, and that the dispute is of minor nature.

That the workman has accepted that he was admitted in Hospital till 12th April, 1965, and he came to the Colliery afterwards.

That in the light of the above facts the actual amount involved in the dispute is roughly Rs. 700 (Rupees Seven hundred) including wages, CBA bonus profit sharing Bonus for the period from 14th April, 1965, to 15th September, 1965, (about five months).

That the employers are, therefore, agreeable to the suggestion of the Hon'ble Tribunal to pay an *ex-gratia* amount of Rs. 400 (Rupees Four hundred) being roughly more than the half the amount involved in the dispute for which the workman has claimed.

It is, therefore, prayed that an award may kindly be given accordingly, if the workman accepts the above offer, made in line with the suggestion of the Hon'ble Tribunal.

No objection. Offer is accepted.

Sd./- H. N. SINGH,
Vice-President,
8-4-1966.

Sd./- L. H. PARVATIYAR,
Legal Assistant,
M/s. Tata Iron & Steel Co., Ltd.,
Jamadoba, P.O. Jealgora, Dhanbad.
Dated, 8-4-1968.

[No. 2/61/65-LRII.]

ORDERS

New Delhi, the 22nd May 1968

S.O. 1922.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Ballarpur Colliery of Ballarpur Collieries Company Limited, Nagpur, Post Office Ballarpur, District Chanda (Madhya Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Jabalpur, constituted under section 7A of the said Act

SCHEDULE

Whether the management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited, Nagpur, was justified in terminating the services of Shri Chokhoba, son of Ramkishan, Timber Mazdoor with effect from the 27th February, 1968? If not, to what relief is the workman entitled?

[No. 3/9/68-LRII.]

S.O. 1923.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Ranipur Colliery of Messrs Equitable Coal Company Limited, Post Office Dishergarh, District Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government cosiders it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Ranipur Colliery of Messrs Equitable Coal Company Limited, Post Office Dishergarh, District Burdwan are justified in refusing employment to Shri Lalmohan Mukherjee, Explosive Carrier, with effect from the 8th January, 1968, on being declared medically fit. If not, to what relief is the workman entitled ?

[No. 6/34/68-LRII.]

New Delhi, the 23rd May 1968

S.O. 1924.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Kharkharee Colliery of Messrs Bharat Mining Corporation Limited, Post Office Kharkharee, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Kharkharee Colliery of Messrs Bharat Mining Corporation Limited, in transferring Shri T. L. Mukherjee, Despatch Clerk, from Kharkharee Colliery to Churi Colliery of Messrs United Karanpura Collieries (Private) Limited with effect from the 24th February, 1967 and subsequent non-employment imposed upon him, were justified? If not, to what relief is the workman entitled?

[No. 2/59/68-LRII.]

BALWANT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 21st May 1968

S.O. 1925.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Messrs Ishwar Industries Limited, Niwar and Shri R. K. Sharma, Mining Engineer, which was received by the Central Government on the 14th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Dated May 3, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. *No.* CGIT/LC(R)(117) OF 1967.

PARTIES:

Employers in relation to the Management of M/s. Ishwar Industries Limited, Niwar, Katni (M.P.).

Vs.

Sri R. K. Sharma, Mining Engineer, 1345, Napier Town, Jabalpur.

APPEARANCES:

For employers.—Sri V. B. Roy, Advocate.

For workmen.—Sri S. K. Mitra, Advocate.

INDUSTRY: Non-Coal. DISTRICT: Katni (M.P.)

AWARD

By Notification No. 24/13/67-LRI dated 24th July, 1967, Asadha, 1889, the Ministry of Labour, Employment and Rehabilitation, Department of Labour and Employment, Government of India, referred the following matter of dispute as

stated in the schedule to the order of reference, to this Tribunal, for adjudication:—

Matter of Dispute

(1) Whether the management of Messrs Ishwar Industries Limited, Niwar are justified in stopping Shri R. K. Sharma from work with effect from the 21st January, 1967 and finally discharging him from service with effect from the 1st March, 1967?

(2) If not, to what relief is Shri Sharma entitled?

2. The facts of the case are simple. Sri R. K. Sharma is a Diploma Holder from Government Mining Polytechnic Chhindwara and had not passed any degree examination from any Engineering Institute of Mining. He applied to M/s. Ishwar Industries Ltd., engaged in the mining and manufacture of refractory bricks on 20th September, 1965. The management enquired from him by letter dated 28th September, 1965, if he was qualified to work as Mines Manager in open cast quarry and the salary acceptable to him (Ex. E/3). He intimated by his letter dated 6th October, 1965 (Ex. E/4) that he was qualified to work as Mines Manager and demanded Rs. 400 per month. According to his statement he was asked by the Director to work and he started working from 16th December, 1965. He was, however, paid at Rs. 310 per month and continued to sign in the Register Ex. E/2. His designation was, however, kept blank in the register till March, 1966 and after that he was noted as Supervisor. Most of the work, however, taken from him was that of Mines Manager as he had been signing throughout in the Attendance Register as Mines Manager. In the statement sent to Chief Inspector of Mines he was designated as Manager (Ex. E/19). It, therefore, appears that although he was paid as a Supervisor but actually work was being taken from him mostly as Mines Manager. He applied to Burn and Company, a rival company, engaged in the same business without the knowledge of his employers, M/s. Ishwar Industries Ltd., who have their factory just across the railway line. The management came to know of it and therefore terminated his services by way of discharge with effect from 28th February, 1967. Sri Sharma raised an industrial dispute contending that he was a technical person and engineer and which in due course resulted in this reference.

3. On pleadings of the parties certain additional issues were framed on 18-10-67 which need not be stated as the facts are practically admitted now. One of the pleas raised was that he was working as a Manager and was, therefore, not a workman. The plea is untenable inasmuch as he had been designated in the pay register as a Supervisor and was paid @ Rs. 310/- per month. Having been in supervisory capacity he could be taken out from the category of a workman under the last clause of Section 2(s) (4) "if either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature." This the employers failed to do. Assuming that he had been designated as a Mines Manager and had been working as such he was also designated as a Supervisor. There is no evidence at all from the employers side that he functioned or performed duties mainly of a managerial nature. It is also true that he was not an Engineer as claimed by him but that would not deprive him of a category of workman as he was doing supervisory duties drawing less than Rs. 500/- and was, therefore, a workman.

4. On merits of the case, there is no legs to stand, for the workman. He admitted in his statement that he had applied to the Burn and Company, a rival concern, engaged in the same business without the consent of his employers. The employers terminated the services for this reason. *Bona fides* of the employers are, therefore, clearly established. The law on the point is well settled. As far back as 1951, the Labour Appellate Tribunal in Buckingham and Carnatic Co. Ltd. *Vs.* Workmen reported in 1951(II)LLJ p. 314 laid down that although the employers have not the absolute right of hire and fire yet if a discharge is rendered *bona fide* and there are no *mala fides* on the part of the management, the Tribunal will not interfere. The principle had been accepted by the Hon'ble Supreme Court in Chartered Bank *Vs.* It's employees reported in 1960 (II)LLJ p. 222 and in subsequent cases. In every case, the *bona fide* is essential. The *bona fides* in this case have been established by the management. While in service of the employers, Sri Sharma had no justification to apply direct to a rival concern without the knowledge or consent of his employers. For such an action, the employers could justifiably terminate his services. So far so for termination. As for stopping him from work with effect from 21-1-1967, it is not necessary to go into the question for which no evidence was led by the parties. His services were terminated with effect from

28th February, 1967 and he would be entitled to his wages whether he worked or not upto that period.

Decision:

The termination of service of Sri R. K. Sharma with effect from 1st March, 1967 was justified. He would be entitled to his wages till the services were terminated. No order for costs.

(Sd.) G. C. AGARWALA,
Presiding Officer.

3rd May 1968

[No. 24/13/67-LRI.]

S.O. 1926.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Samnapur Manganese Mines, Tirodi, District Balaghat and their workmen, which was received by the Central Government on the 17th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, JABALPUR

Dated April 29, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. NO. CGIT/LC(R) (118) OF 1967

PARTIES:

Employers in relation to the Samnapur Manganese Mines, Tirodi, Distt., Balaghat (Madhya Pradesh)

Vs.

Their workmen represented through the General Secretary, Samyukta Khadan Mazdoor Sangh, P.O. Tirodi, District, Balaghat (Madhya Pradesh).

APPEARANCES:

For employers.—1. Sri R. T. Jabarde, Manager for Plastic Industries.

2. None for Vimal Kumar and Company.

For workmen.—Sri P. K. Thakur, Vice President, Samyukta Khadan Mazdoor Sangh.

INDUSTRY: Manganese Mine; DISTRICT: Balaghat (M.P.).

AWARD

By Notification No. 35/5/67-LRI dated 24th July, 1967, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

Whether the demand of the workers of Samnapur Manganese Mines, Tirodi, District Balaghat, for increased wages is justified? If so, to what relief are the workmen entitled and from what date?

There are two parties in the array of employers. M/s. Modern Plastic and Industries Limited, Wardha Road, Nagpur, are Owners of the mine, Samnapur Manganese Mines, Tirodi, Distt., Balaghat of which M/s. Vimal Kumar and Company, Balaghat, second employer appears to have the Contractors. The Union, Samyukta Khadan Mazdoor Sangh, raised a demand that the wages paid to the workers in this mine are exceedingly low being only Rs. 1·42P per day, whereas in the neighbouring mines the prevailing wages are Rs. 2 per day. This demand was raised in conciliation on 17th April, 1966, and conciliation having failed resulted in this reference on 25th July, 1967.

3. After issue of usual notices, both parties were required to file statements of claim. They were, however, filed after numerous adjournments had been taken by one or by both the employers. Certain issues were also framed on the hearing rendered on 8th February, 1968. The next date fixed for hearing was 8th March, 1968, when both the employers were absent and the Union appeared. Counterfoil receipt books and copies of certain consent award and Bi-parties settlement were filed. The employers were given another chance for appearance subject to payment of Rs. 50 as costs and the hearing was adjourned to 23rd April, 1968. On this date also, none appeared for M/s. Modern Plastic and Industries Ltd. For M/s. Vimal Kumar one Sri K. K. Murty appeared but it was held that he had no *locus standi* for appearance. Costs awarded on previous date had also not been paid. The hearing was adjourned to this date, the 29th April, 1968. Both the employers again absented and therefore the hearing was rendered *ex parte*.

4. For the Union, Samyukta Khadan Mazdoor Sangh, Sri S. P. Mukerji, Vice President was examined as W.W. 1. From his evidence it appears that there are about 76 or 77 workers in this mine and some 60 to 70 have been the members of this Union. He produced the Membership Register and the Counterfoil receipt books. The Union, therefore, was competent to raise the dispute. It further appears from his evidence there are other neighbouring mines in this area, like Miragpur and Ukua. He proved consent award in two cases before the Bombay Tribunal (Exts. W/2) relating to Hirapur Manganese Mine and Ukua Samnapur Mine. The consent agreement (Ex. W/3) is dated 9th November, 1965, which shows that the employers in those cases agreed to pay a minimum wage of Rs. 2 per day with effect from 1st January, 1965 as a minimum wage interim payment to be revised at the rate which may be fixed by the Hon'ble Minister for Labour and Employment, Sri D. Sanjivayya. Arbitrator. There is nothing to indicate that any award was recorded by the learned Arbitrator. There is, however, a more recent case which was before this Tribunal in relation to Paonia in this district belonging to Sri R. S. Seth Gopi Kishan Agarwal and this very Union. The case was Ref. No. CGIT/LC(R) (114) /67. A settlement was reached in that case and the original terms of settlement are embodied in Ex. W/4. By that settlement a wage of Rs. 2:10 per day for surface piece rated workers employed on Bed Ore Mining, Rs. 1·95 per day for surface piece rated workers employed on Float Ore Mining and the minimum, wage of Rs. 1·75 per day for male and Rs. 1·60 for female adult workers engaged on surface work other than actual mining was agreed. It was further agreed that for different categories the average shall be worked out every four weeks and if the average is below than the prescribed minimum, the employers will make good the difference. This settlement was arrived at on 20th November, 1967. Since this is a more recent settlement of another case in the neighbourhood of this mine and there is no indication that any award was passed by the Hon'ble Minister in cases of the Bombay Tribunal relating to Hirapur and Ukua Managanese Mines, I accept the basis in the case of Paonia Mines for the award.

Result:—

The employers whosoever they be whether the principal employer M/s. Modern Plastic and Industries Ltd., or the Contractors, Vimal Kumar and Company or any other contractor in future shall pay a minimum of Rs. 2·10P per day to surface piece rated employed in Bed Ore Mining, Rs. 1·95P per day for surface piece rated worker employed on Float Ore Mining and a minimum of Rs. 1:75P per day for Male and Rs. 1:60P. per day for Female for those surface workers who are engaged in operations other than actual mining. If the piece rate wages fall short in average calculated after every four weeks at the rate stated above, the employers will make good the difference to the workers. Both the employers shall pay Rs. 100 each to the Union as costs of these proceedings.

Sd./- G. C. AGARWALA,
Presiding Officer,
29-4-1968.

[No. 35/5/67-LRI.]

S.O. 1927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur in the Industrial Dispute between the employers in relation to the Punjab National Bank Limited, New Delhi, and their workmen, which was received by the Central Government on the 14th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, JABALPUR

Dated April 29, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. No. CGIT/LC(R)(116) OF 1967

PARTIES:

Employers in relating to the Punjab National Bank Limited, New Delhi.

Vs.

Their workmen represented through the President, M.P. Bank Employees Association, 84-Kingsay Cantt., Jabalpur (M.P.).

APPEARANCES:

For Bank.—Shri R. P. Raizada, Staff Officer.

For workmen.—Sri Prem Nath Sharma, President of the Association.

INDUSTRY: Bank. DISTRICT: Jabalpur (M.P.).

AWARD

By Notification No. 51(27)/67-LRIII dated 7th July, 1967, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

Whether the management of the Punjab National Bank Limited, New Delhi, was justified in not confirming Shri S. P. Narang, a clerk at their Jabalpur Cantonment Branch office after completion of six months continuous service from the 11th May, 1965? If not, to what relief is the workman entitled?

2. The admitted facts of the case are that Sri Suraj Prasad Narang was appointed as a clerk on 11th May, 1965 in the Cantonment Branch of the Bank. No letter of appointment was given to him. When he was about to complete six months service two day's break was given on 11th and 12th November, 1965. He was reappointed on 13th November, 1965 and is continuing since then. According to the Union, M.P. Bank Employees Association, which sponsored the dispute this break of two days was artificial and was motivated to deprive Sri Narang from permanency which amounted to unfair labour practice. He was not appointed temporarily but was a probationer from the very beginning having been appointed in a clear vacancy. The action of the Bank was an unfair labour practice as it contravened para 495 of the Shastry Award and paragraph 23.15 of the Desai Award. It was, therefore, claimed that Sri Narang should be deemed to have been confirmed from 11th November, 1965.

3. The Bank resisted the claim on the ground that Sri Narang was actually appointed as a temporary hand in officiating arrangement. He acquired no right to claim permanency. There was no *malafide* intention in giving a break in service for 11th and 12th November. The officiating arrangement came to an end when in March, 1966 one Sri K. C. Jain was transferred to Jabalpur Cantt. The Union launched agitation and resorted to work to rule movement. The Bank had no option but to continue a temporary appointment of Sri Narang as an additional hand. He, therefore, continued to be so. Subsequent to the Bi-partite settlement between the Banks and the Union which has become in force from 19th November, 1966, under paragraph 20.9 to 20.11 of that settlement Sri Narang has no claim for confirmation after six months from 11th May, 1965 and the Union cannot agitate the question. It was, however, stated that Sri Narang has now been absorbed as a probation clerk-*cum*-godown keeper and the dispute does not subsist. A technical plea was also raised that the dispute has not been properly sponsored and is not an industrial disoute.

4. After issue of usual notices, parties filed their statements of claim. The Bank filed the rejoinder but none was filed by the Union. The following issues were framed for determination:—

Issues

1. Whether the dispute is not an industrial dispute, having not been properly sponsored,
2. Was workman concerned Shri S. P. Narang appointed temporarily or as probationer on 11th May, 1965
3. Was the break of service on 11th and 12th November, 1965 artificial and *malafide* ?
4. Whether Shri Narang was re-employed on 13th November, 1965 again as temporary or was he probationer?
5. Whether the Bank violated paragraph 495 of the Shastry Award?
6. Is he covered by paragraphs 23.15 of Desai Award and cannot claim permanency?
7. A. What is the effect of Bi-partite Settlement between the Bank and All India National Bank Employees Federation. Can the Association raise the dispute after the settlement?

   B. Whether the demand is governed by para 20.9 to 20.11 of the Bi-partite Settlement to be effective from 19th November, 1966. Has Shri Narang no claim for confirmation thereunder?
8. Whether Shri Narang has been absorbed as a probationer clerk-*cum*-godown keeper and there is no dispute left for adjudication?

Findings :—

5. *Issue No.* 1.—There is no merit in this plea. The membership form of Sri Narang is on record and is Ex. W/1. It shows that he became a member on 1st April, 1966. He has corroborated this by statement. Counterfoil receipts have also been filed by the Union to show that he paid subscriptions in 1966 and 1967. He made a complaint to the President of the Union by letter dated 23rd November, 1966 (Ex. W/3) that artificial break was given in his service on 11th and 12th November, 1965 and he has not been confirmed. There is another letter dated 25th November, 1966 (Ex. W/4) signed by 18 employees of this Bank in the Cantonment Branch raising the dispute. Thus the dispute has been properly raised and sponsored. As a matter of fact, the Bank itself admitted that in March, 1966 when one Sri K. C. Jain was transferred to this Branch employees raised an agitation and the Bank had to yield so as to allow Sri Narang to continue. This by itself, sufficient to show that the dispute was essentially an industrial dispute.

6. *Issues No.* 2 to 6.—Admittedly there is no letter of appointment. Paragraph 495 of the Sastry Award which was adopted by the Desai Award clearly specifies that the "Bank shall give a written order specifying the kind of appointment and the pay and allowance to which he would be entitled." Obviously, there has been a breach of this direction, the inference of which would be that it was with a sinister motive. A temporary employee under paragraph 508(c) of the Shastry Award has been defined as "an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature." This was modified a little in the Desai Award by paragraph 21.20 on the demand of the Indian Banks Association that a substitute employee appointed temporarily for a permanent employee who may be on leave should also be included. This was accepted and included in the definition of "temporary employee". It was stated that "temporary employee will mean an employee who has been appointed for a limited period of work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature, and includes an employee other than a permanent employee who is appointed in a temporary vacancy of a permanent workman." The Bank has taken it's stand in this addition of the definition by the Desai Award. If whole paragraph 21.20 is read in full context, it would be manifest that this addition was made in respect of arrangements made when a permanent employee has proceeded on leave. Paragraph 23.15 which deals with classification has, therefore, to be read with paragraph 21.20. This definition does not cover the case when there is a permanent vacancy and a permanent employee has been promoted to officiate in another

superior vacancy. It may be noted that Sri Narang was not appointed for any fixed period. Had he been a temporary employee his services could not have been terminated under paragraph 522(4) of the Sastry Award without 14 days' notice. The fact that no such notice was given and a break in his service was made on 11th and 12th November, 1965 is itself an indication of the fact that he was not a temporary employee otherwise 14 days' notice would have been given in his case. Monthly statements of temporary staff which were being sent to the District Manager would show that Sri Narang had been appointed in place of a senior clerk who was appointed to officiate as Supervisor and the Supervisor in turn had been officiating as Accountant for a post sanctioned to the Branch. This position continued in the monthly statements from June, 1965 onwards till November when two days' break was given and subsequently also when re-appointed. The monthly statement for the month of April, 1966 would show that from 1st April, 1966 Sri Narang has been shown as working against a sanctioned vacancy and this has continued to be recorded throughout in subsequent monthly statements. Ex. E/1 is a letter dated 20th April, 1966 from Sri V. P. Amar, Manager, in which it was stated that Sri Narang had been working against a sanctioned post. This was to solicit instructions after the dispute had been raised by the Union. It was admitted by the present Manager, Sri Gopi Lal Bhargava that the statement of temporary employees sent to Head Office are not shown the employee concerned. It was further admitted that he had been demanding for additional staff beyond the sanctioned strength stating that "during my time the actual need was more than the sanctioned strength". It is, therefore, evident that the work was a permanent nature and Sri Narang was appointed not in any leave vacancy but in the permanent arrangement. He is not covered as a temporary employee by the definition as contained in paragraph 508(c) of the Shastry Award read with paragraph 21.20 and para. 23.15 of the Desai Award. Consequently, even though the Bank had been treating Sri Narang as a temporary employee for purposes of their records and communications to the District Manager or Head Office, Sri Narang shall be deemed to have been a permanent employee having been appointed in a permanent vacancy and on work of permanent nature. The very fact that the Bank gave a break of two days on 11th and 12th November, 1965 is indicative of the motive that he was a probationer and was an attempt to thwart the claim of permanency as probationer. This artificial break in his service was undoubtedly malafide and amounted to unfair labour practice.

7. It is, therefore, held that Sri Narang shall be deemed to have been appointed as a probationer on 11th May, 1965, that the break of service on 11th and 12th November, 1965 was artificial and malafide, that he continued to be a probationer even though reappointed on 13th November, 1965, that the Bank violated paragraph 495 of the Shastry Award in not giving an appointment letter and that paragraph 23.15 of the Desai Award is of no help to the Bank. Having completed six months period of probation from 11th May, 1965 he was entitled to confirmation from 11th November, 1965.

8. *Issue No.* 7(*A*) & (*B*).—The plea of the Bank in this respect is clearly misconceived. The Bi-partite settlement of which a copy has been filed which modifies the Shastri and the Desai Awards to the extent stated therein, according to the Bank itself, became operative from 19th November, 1966. The dispute had been raised earlier before the settlement. Paragraph 20.9 to paragraph 20.11 of this Bi-partite settlement on which the Bank has relied are wholly untenable. Para. 20.9 deals with temporary workmen who were appointed on or after 1st June, 1965 and ceased to be in service before the date of the settlement. Paragraph 20.10 deals with temporary workman who does not fall within the definition of temporary employee and has worked for 240 days. Paragraph 20.11 covers the cases of those who are not covered with the above two paragraphs and would be deemed on probation if fulfilling the three conditions specified therein. I think Sri Narang is covered by paragraph 20.10 if he was a temporary workman as defined in paragraph 20.7 and 20.8 of the Bi-partite Settlement or if he was not so then there is no question of the applicability of Bi-partite Settlement in his case. Actually speaking he had ceased to be a temporary employee as he shall be deemed to have been appointed as a probationer and confirmed on 11th November 1965 by reason of paragraph 495 of the Shastry Award and which was maintained by the Desai Award.

9. *Issue No.* 8.—The fact that the Bank has now absorbed him as a probationer clerk-*cum*-godown keeper is of no avail. As a matter of fact he shall be deemed to have been a probationer from 11th May, 1965 and a permanent employee from 11th November, 1965. This unilateral act on the part of the Bank is of no consequence.

Decision :—

The result is that the action of the Bank in not confirming Sri S. P. Narang after six months continuous service from 11th May, 1965 was unjustified and he shall be deemed to have been confirmed with effect from 11th November, 1965. The Union, namely M.P. Bank Employees Association will be entitled to Rs. 100/- as costs from the Bank.

(Sd.) G. C. AGARWALA,
Presiding Officer,
29-4-68.

[No. 51/27/67-LRIII.]

New Delhi, the 23rd May 1968

S.O. 1928.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Presiding Officer, Central Government Industrial Tribunal, Jabalpur, in the matter of applications under section 33A of the said Act, from Sarvashri Ved Prakash Nanda and Gunna Lal Gupta, which was received by the Central Government on the 14th May, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, JABALPUR

Dated April 29, 1968.

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE No. CGIT/LC(A)(5) OF 1968 U/S 33-A I.D. ACT.

PARTIES:

1. Shri Ved Prakash Nanda S/o Shri Dhanpat Rai Nanda.
2. Shri Gunna Lal Gupta S/o. Shri Kolai Ram Gupta.

(Care of The General Secretary, Choona Mazdoor Sangh, Maihar, Distt. Satna, M.P.)—*Applicants.*

Versus

The Manager, M/s. S. K. Kahansons (Stone Lime) Co., Private Ltd., Maihar.—*Opp. Party.*

APPEARANCES:

For Complainants.—S/Sri Ved Prakash Nanda and Gunna Lal Gupta, complainants themselves.

For employers, opposite party.—Shri R. K. Sharma, Asstt. Manager, M/s. S. K. Kahansons (S.L.) Co. (P) Ltd., Maihar (M.P.).

INDUSTRY: Stone Lime. DISTRICT: Satna (M.P.).

AWARD

This is a complaint filed by two workers S/Sri Ved Prakash Nanda and Gunna Lal against M/s. Kahansons (P) Ltd., Maihar, complaining that during the pendency of an industrial dispute case, the number of which was not stated, the employers terminated their services. They were concerned workmen in the dispute in question. It was also alleged that certain dues outstanding to their credit were also not paid. After issue of usual notices, on this date of hearing when the employers, opposite party, were required to file reply, parties compromised the dispute and gave a petition that the case be decided in terms of the compromise settlement which is annexure to this award. The terms of settlement have been duly verified before me. They appear to be fair and just for both sides and the case is decided as compromised. Since the order amounts to an award let copies be sent to appropriate Government for publication.

Sd/- G. C. AGARWALA,
Presiding Officer,
29-4-68.

FORM H.

(See Rule 58)

Form of Memorandum of Settlement

Name of Partles:—

Representing employer (s).—Shri R. S. Chauhan, Manager, M/s. S. K. Kahansons (Stone Lime) Co. Pvt. Ltd., Maihar.

Representing workmen.—1. Shri Ved Prakash Nanda s/o Shri Dhanpat Rai Nanda, Maihar.

2. Shri Gunna Lal Gupta s/o Shri Kelai Ram Gupta, Maihar.

Short recital of the Case

Complaint under section 33A of the Industrial Dispute Act 1947—Contravention of the provisions of section 33 of the I.D. Act, 1947 for payment of Bonus, Annual Leave with wages and other dues and also the relief sought for reinstatement having being wrongly dismissed, from their employment under reference No. CGIT/LC (A) (5)/68 dated 11th March, 1968 before the presiding Officer, Central Government Industrial Tribunal-*Cum*-Labour Court Jabalpur.

Terms of settlement

Re: Shri Ved Prakash Nanda:—

Bonus for the years 1964, 1965, 1966 and 1967, *i.e.*, for three years nine months @ Rs. 300 per year for complete three years Rs. 900 plus 4 per cent of salary earned by him during the nine months service in the year 1967 amounting to Rs. 54 total amounting to Rs. 954 will be paid off within a week from the date of the settlement.

Annual leave with wages during the full term of service period computed, settled and agreed Rs. 75.

Salary remaining unpaid for 18 days during the month of August, 1967, and salary for the month of September, 1967, covering the notice period wage Rs. 237/10.

Retrenchment compensation at 15 days per year for which wages amount to Rs. 185.

Total Rs. 1,551:10 paise .

It has been agreed and settled between the employers and the said workmen that total amount of Rs. 1,551:10 paise is the full and final settlement of all his claims of the above reference which shall be paid to him and received by him within a week from the date of filing this settlement before the honourable Industrial Tribunal.

The workman has also agreed that the employer is entitled to deduct the sum of Rs. 150 and other sum found due against him as an advance while paying to him the sum of Rs. 1,551.10 paise and the workman Shri Ved Prakash Nanda shall immediately vacate the Quarter of the employer which is being occupied by him.

Re: Shri Gunna Lal Gupta:—

Bonus for the years 1965, 1966 and 1967 and annual leave with wages whatever is found due legally after consulting records of the employer will be paid off to him within fifteen days from the date of filing the settlement before the honourable Industrial Tribunal.

Shri Gunna Lal Gupta agrees to withdraw his claim with regards to his claim for different payment of wages from 1st June, 1966 to 30th April, 1967, and also his claim for reinstatement. Thus except the payment of bonus and annual leave with wages he relinquishes all his claims made in the above reference.

Witnesses:—

1. Sd./-RAMADHAR,
28-4-1968.
2. Sd./- AHAD HUSAN.

Signature of the parties:—

1. Sd./- VED PRAKASH NANDA ,
2. Sd./- GUNNA LAL GUPTA,
Workmen.

Signature of the employer:—

Sd./- R. S. CHAUHAN.
Manager,
M/s. S. K. KAHANSONS (Stone Lime)
Co. P. Ltd.

Part of Award.

Sd./- G. C. AGARWALA,
Presiding Officer.

[No. 36/17/68-LRI.]

S.O. 1929.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal Bombay in the industrial dispute between the employers in relation to the State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 20th May 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BOMBAY.

REFERENCE No. CGIT-9 OF 1967

PARTIES:

Employers in relation to the State Bank of Bikaner and Jaipur.

AND

their workmen.

PRESENT:

Shri A. T. Zambre, Presiding Officer.

APPEARANCES.

For the employers.—Shri N. R. Pandit with Shri R. K. Ghotgalkar, Labour Officer, Indian Banks' Association, Bombay and Shri H. S. Venkatesh, Agent.

For the workmen.—Shri K. K. Mundul, Vice-President, All India Bank Employees' Association and Shri R. Narayanan, General Secretary, State Bank of Bikaner and Jaipur Employees' Union.

STATE :—Maharashtra. INDUSTRY :—Banking.

Bombay, the 25th April, 1968.

AWARD

The Government of India in the Ministry of Labour and Employment have by their order No. 51(31)/65-LRIV, dated 13th April, 1967, referred to this Tribunal the industrial dispute between the employers in relation to the State Bank of Bikaner and Jaipur and their workmen in respect of the matter specified in the following schedule :—

SCHEDULE

"Whether the services of Shri J. Shetty, Watchman, employed at Dana Bunder Branch of the State Bank of Bikaner and Jaipur, Bombay, were utilised by the management to perform clerical duties during the period from the 12th September, 1962 to the 15th March, 1965 ? If so, to what relief is the workman entitled to?"

The State Bank of Bikaner and Jaipur has a branch at Dana Bunder, Bombay. The employees union representing the workmen has alleged that the workman Shri Jayaram Shetty was appointed by the Bank at the Dana Bunder branch as watchman from June 1962 and his service conditions were governed by the award popularly known as the "Sastry Award as modified" and later "Desai Award" during the relevant period. Subsequent to his appointment as watchman Shri Shetty passed his matriculation examination in the year 1962 and approached the agent of the branch of the Bank with a request that he had attained the necessary qualification and that as per practice of the bank he should be promoted to the post of a clerk. The union has alleged that it was a customary usage and traditional practice of the bank to promote subordinate staff in the clerical cadre on passing the high school examination. During the last several years many such subordinate staff members had been promoted to clerical cadre immediately after passing high school examination and many such promoted subordinate staff members are holding high positions in the bank. Accordingly the agent acceded to Shri Shetty's request and asked him to perform clerical work on various desks of the bank such as writing savings bank supplementaries, current deposit account supplementaries, cash credit supplementaries, maintenance godown register, writing clearing main sheets, clearing schedules sheet, transfer scrolls, clearing supplementaries, attending godowns etc. and he continued to work as a clerk upto 15th March, 1965.

3. During this period Shri Shetty was paid only the salary and allowances applicable to a watchman though he performed the clerical duties assigned to him

successfully. He made oral representations to the agent to change his designation as a clerk to which he was entitled. The Agent orally assured him that his case had been referred to the head office for necessary orders. But owing to the undue delay in effecting the change in his designation and payment of clerical wages, the State Bank of Bikaner and Jaipur Employees' Union of which he was a member made representations to the bank in these matters.

4. The union has contended that subsequent to this representation the agent Dana Bunder Branch of the Bank issued instructions to the effect that Shri Shetty should perform duties in the evening at changed timings which meant that the clerical duties assigned to him earlier stood withdrawn and he stood reverted to the post of a watchman performing thereby the duties of a watchman. It was contended that in the month of November, 1964 the bank issued a circular altering the conditions of service in respect of eligibility for promotion from the cadre of subordinate staff to the clerical staff. The union protested against such arbitrary and capricious act of the management particularly when representations had already been made in respect of the workman Jayaram Shetty. The withdrawal of the customary usage and practice applicable to the staff was in breach of section 9A of the Industrial Disputes Act. It has further alleged that in the year 1963 fresh recruitment has been effected in various branches of the bank at Bombay including the Dana Bunder Branch. Even then while the Bank took advantage of the qualifications of Shri Shetty and assigned to him clerical work he was neither given the opportunities of being taken up as a clerk nor paid appropriate clerical wages. His case was overlooked and direct recruits were given chances contrary to the directions of the Sastry Award. The union has contended that the Bank thus flouted the decisions and directions of the award by not paying the prescribed scales of pay to Shri Jayaram Shetty for the clerical work which was done by him between 1962 and 15th March, 1965 and have prayed that the designation of Shetty should be changed from watchman to clerk and he should be paid the clerical wages.

5. The State Bank of Bikaner and Jaipur has by its written statement opposed the reference contending that the Dana Bunder branch of the bank had more than adequate clerical staff during the period 12th September, 1962 to 15th March, 1965 and there was neither any need nor occasion for the bank to utilise the services of Shri Shetty for clerical work and no clerical duties were entrusted to him. It has been alleged that Shri Shetty had of his own free will and volition done some work of a clerical nature for learning the work. At no time had Shri Shetty claimed any difference in pay and he was not entitled to any relief.

6. The Bank had admitted that Shri Shetty was initially appointed as a watchman for a period of 87 days with effect from 2nd June, 1962. He was temporarily taken up as a watchman on subsequent occasions also and was confirmed as a watchman with effect from 1st June, 1963. They have admitted that Shri Shetty passed the matriculation examination in 1962 but have denied the suggestion that Shri Shetty approached the agent of the branch at Dana Bunder and requested him to promote him as a clerk and that the agent had conceded to his request. They have contended that for the first time Shri Shetty requested that his case may be considered for promotion to the clerical cadre by his letter dated 22nd November, 1963. There was no assignment of any clerical work or any request for change in his designation. There was also no assurance in the matter as claimed by him. He was not required to do any clerical work and there was no question of the withdrawal of the clerical duties from him. Shri Shetty was all along a watchman and was working as such but as he persisted in making entries of a clerical nature in the bank's books and records his hours of work were changed on 16th March, 1965.

7. As regards customary usage and practice the Bank has admitted that there were some instances of the members of the subordinate staff having been promoted to the clerical cadre on passing their secondary school examination but have alleged that the same was done in the discretion of the management and subject to availability of vacancies. They have further contended that Shri Shetty was not appointed as a subordinate staff in the State Bank of Jaipur on 2nd June, 1962 or on any day prior to the amalgamation of the State Bank of Jaipur and the State Bank of Bikaner. He was working in the State Bank of Jaipur on a temporary basis and his services before 1st June, 1963 had lapsed on account of breaks in service and for all purposes his service is to be counted from 1st June, 1963. He was also not covered by section 11 of the State Bank of India (Subsidiary) Banks Act, 1959. The reference has been further challenged on the

contention that this Tribunal had no jurisdiction to grant the prayer of the workman for changing the designation of Shri Shetty from watchman to clerk or his confirmation in the clerical cadre and he was not entitled to any relief.

8. The basis of the contention of the union in this reference is that Shri Shetty's services were utilised by the Bank and he had worked in the Dana Bunder Branch of the Bank as a clerk from November 1962 to 15th March, 1965. During the hearing the union had requested for the disclosure of information and production of the various registers of the bank in which the workman working as a clerk had made entries and called upon the other side to produce—

(1) Savings Bank Supplementaries from 12th November, 1962 to 15th March, 1965.

(2) Current Deposit Accounts Supplementaries Nos. 1 and 2 from 27th November, 1962 to 9th March, 1965.

(3) Cash credit supplementary from 11th February, 1963 to 13th March, 1963.

(4) Godown register kept in the godown of Messrs R.O. Valia & Co. from 2nd January, 1963 to 15th March, 1965.

(5) Delivery orders of Messrs R.O. Valia & Co. from 2nd January, 1963 to 15th March, 1965.

(6) Clearing main sheets from 18th May, 1964 to 16th March, 1965.

(7) Clearing schedule sheet from 18th May, 1964 to 16th March, 1965.

(8) Transfer scroll from 7th November, 1963 to 15th March, 1965.

(9) Clearing subsidiary registers Nos. 1, 2, cash credit savings from 8th November, 1963 to 16th March, 1965.

(10) Muster rolls i.e. attendance register from 12th November, 1962 to 15th March, 1965.

9. At first the Bank wanted the union to prove all the entries alleged to have been made by the workman in these registers but subsequently it was agreed that the union should on inspection of the books make lists of the various entries and produce them to prove the work done by Shri Shetty and accordingly the union had produced the statements W-3, W-4, W-5 and W-6 about Shri Shetty's work. It also produced other documents and examined Shri Shetty as a witness. The bank did not examine any witness but has produced some letters and some orders in the course of examination of Shri Shetty and I shall discuss the evidence about the clerical work done by the workman.

10. It is not in dispute that the Bank of Jaipur had appointed Shri Jayaram Shetty as a watchman at its Dana Bunder Branch from June 1962. First he was appointed for 87 days and after a short break he was given a further appointment as a watchman and he has been confirmed as such from 1-6-1963. The union has alleged that the management utilised the services of Shri Shetty as a clerk after his passing the matriculation examination. Though in the order of reference the dispute referred for adjudication is about the services of watchman Shri J. Shetty for the period from 12th September 1962 to 15th March 1965 to have been utilised as a clerk....Shri Mundul on behalf of the union submitted that the union claims and would establish the clerical work done by Shri Shetty from 22-11-1962 to March 1965 and I shall discuss the evidence and first find whether during this period Shri Shetty had in fact done clerical work and whether his services were utilised by the management to perform clerical duties.

11. Shri Shetty has stated on oath that though he was appointed as a badli watchman he was not assigned the watchman's work but was asked by the agent to assist the clerks and while assisting the clerks he was doing clerical work. He has further stated that the agent also asked him to write the supplementaries and he had written the various supplementary ledgers. He has stated that he started writing supplementaries from 12th November, 1962 and the entries were in his handwriting Pages 1, 2 and 3 of the statement filed by the union show the number of vouchers written in the savings bank supplementary. He has further stated that there is a rubber stamp of the bank showing that the entries were written by him. There is a practice in the bank to show the name of the writer in the register. Shri Shetty has signed the entries in the register as a writer. Some of the pages are also signed by the accountant and agent in token of their being checked and there is also a rubber stamp of the bank.

12. I have already observed that the bank has subsequently agreed for the production of the statements made by the union from the bank books and accepted the lists of the entries made by the workman. The lists would show the clerical work done by Shri Shetty. Pages 1, 2 and 3 show the number of entries written by Shri Shetty in the savings bank supplementary, current deposit account supplementary and cash credit supplementary. The number of vouchers varies from day to day Sometimes the number of credit vouchers is 16, 18, 24, 30 and 36 and the total number of cash vouchers is 60, 66, 67 and 74. Pages 4 and 5 exhibit W-3 are the statements showing the entries and the number of cheques written by Shri Shetty in the clearing schedule. The entries will show that Shri Shetty has on some days written more than 100 cheques. These statements pertain to the entries made in the books for the year 1964-65. The very first entry dated the 18th May, 1964 pertains to 93 cheques which were sent for clearance out of which 77 were received back. On many days Shri Shetty has entered more than 100 cheques and on some days than 200 cheques. All the entries in the books are in the handwriting of Shri Shetty and they show that he was doing considerable clerical work in the office.

13 The statement pages 6 and 7 are the entries from the transfer scrolls and show the number of the credit and debit vouchers written by him. Besides making entries in the various registers of the bank Shri Shetty was also asked to go to the godown of the Bank and effect deliveries for the customers. Pages 14, 15 and 16 of the statement show the goods delivered by Shri Shetty from the godown of Messrs. R.O. Valia & Co. In every months he had gone to the godown and effected five or six deliveries He has signed the delivery orders in token of the delivery. The delivery orders are signed by the Manager of the bank and they also bear the stamp of the bank. The stamp is also signed by the Manager in token of the verification of the voucher. The union has made a list of the various delivery orders from the scroll book of the years 1963, 1964 and 1965 and have produced a list at pages 14 and 15. Shri Shetty has stated that all deliveries under these orders were effected by him and they bear his signature together with the stamp of the bank and the signature of the Manager. He has further stated that he has received goods on behalf of the Bank from the parties. It has come in evidence that the godown of the bank is situated at Worli and Shri Shetty has stated that he was required to go to the godown from the office for effecting the delivery and receiving the goods. His evidence further shows that whenever he was required to go to the godown either the agent or the senior godown keeper handed over the godown keys to him and this evidence that the agent or godown keeper handed over the keys to Shri Shetty leaves no doubt that the bank itself wanted Shri Shetty to perform the work of the godown clerk and there is no substance in the management's version that Shetty was not asked to do clerical work.

14. As regards delivery orders it was suggested that Shri Shetty had made signatures on the dead file of the delivery orders to establish his claim and in support of this contention some inconsistency in the date of the delivery order No. 2170 exhibit E-8 was pointed out. It is true that this delivery order exhibit E-8 at the top bears the date 22nd November, 1963. It is also clear that on the reverse Shri Shetty has put his signature and the endorsement with the date 21st November, 1963. However, the party concerned has also put his signature on this document and below it the office has put the date 21-11-1963. There is also a rubber stamp of the bank. It is further clear from the application of the party accompanying the delivery order that the party made an application for delivery on 21-11-1963 and there is no substance in the suggestion that Shri Shetty had put his signature on the dead file. On the contrary the fact that he had gone to effect delivery shows that a heavy responsibility was imposed upon him. Shri Shetty has stated that in the beginning for three or four months though he was getting the key from the officers he did not sign the key register when the key was given to him. Thereafter the agent asked him to put his signature in the register while taking the key and there are his signatures in the register. He has put his signature in the register dated 23-6-1964 under the column godown keeper's initials and I am satisfied that the bank has asked Shri Shetty to perform clerical duties.

15. Shri Pandit on behalf of the bank has argued that the clerical work alleged to have been done by the workman can be written at the end of the day. Shri Shetty was not asked to do the clerical work but he has done it surreptitiously with a view to learning clerical duties and even though it is held that he has done some clerical work there is no proof that his services were utilised as a clerk. However, if we consider the volume of the clerical work proved to have

been done by Shri Shetty every day and the long period for which he has been doing the work and the various sections in which he has effected entries leaves no doubt that he was doing clerical work with the consent and knowledge of the bank authorities. The circumstance that he was handling important documents of the bank such as cheques, negotiable instruments and registers shows that the authorities wanted him to do that work. The circumstance that he was going to the godown with the godown keys conclusively proves that every time he must have been asked to do the work of a godown keeper and there is absolutely no substance in the contention that Shri Shetty was doing the work surreptitiously without the knowledge of the bank officers.

16. It was further argued that the time that one would require for making the entries would be very short and no importance can be attached to the entires proved to have been made by him. However, if we consider the nature of the entries and the sections in which he has worked we shall have to come to the conclusion that Shri Shetty was sitting in the office as a clerk like other clerks and was effecting the entries whenever the documents and registers were passed on to him for the purpose. It is significant to remember that the entries in the transfer scrolls are made by two or three clerks. In his cross-examination the bank had produced some entries from the transfer scroll. Exhibit E-16 shows that on 15-6-1964 there were about 22 credit entries and 25 debit entries out of which Shri Shetty had written 10 credit voucher entries and 11 debit voucher entries. Similarly on 13-6-1964 exhibit E-17 there are in all 17 credit and 18 debit entries out of which Shri Shetty made five debit and 5 credit entries. Similarly on 4-12-1964 out of 23 credit and 29 debit entries Shri Shetty has made three credit and three debit entries. These entries clearly show that he was sitting in the office counter as a clerk and was making entries when the documents and the scroll were passed on to him. Shri Shetty has in his re-examination stated that the transfer scroll is the bank's property and the subordinate staff does not get these books for other purposes. They are handed over generally by senior persons to other officers and for making entries in the transfer scroll he did not get all the vouchers at one time. The scroll may be written by three or four persons. The scrolls are signed by the Assistant Accountant and this evidence in my opinion leaves no doubt that the services of Shri Shetty were utilised to perform clerical duties.

17. It is significant to remember that though Shri Shetty was officially designated as a watchman inveriably during his working hours there was another watchman on duty. Shri Shetty has stated that during his working hours there was another workman working as a watchman. His name is Basudeo Joshi and the timings are marked in the muster roll. It has also come in evidence that the part in which the bank is situated has got only one entrance both for coming in and for going out and the circumstance that during the working hours of Shri Shetty there was another watchman shows that Shri Shetty was asked to do clerical work.

18. It is further significant to note that during all his service except for a short period his duty hours are from 10 a.m. to 6 p.m. He has stated in his cross-examination:—

> "Generally I was working from 10 a.m. to 6 p.m. that is 7 hours every day."

It was only during a period of a fortnight in the month of April 1963 that he was required to work from 2 a.m. to 10 a.m. and this circumstance also supports the case of the workman that his services were utilised for doing clerical duties. Shri Shetty though on the roll was shown to be a watchman he was working as a clerk.

19. Even as regards the period it is further clear that he is doing clerical work since November 1962. Shri Pandit representing the bank has stated that even if all the entries are taken into consideration they would show that Shri Shetty has done clerical work on the following days:—

11 days in December 1962.
11 days in January 1963.
16 days in February 1963.
9 days in March 1963.
8 days in April 1963.
13 days in May 1963.
7 days in June 1963.
10 days in July 1963.

7 days in August 1963.
4 days in September 1963.
1 day in October 1963.
8 days in November 1963.
6 days in December 1963.
16 days in January 1964.
15 days in February 1964.
13 days in March 1964.
10 days in April 1964.
14 days in May 1964.
21 days in June 1964.
17 days in July 1964.
15 days in August 1964.
24 days in September 1964.
26 days in October 1964.
24 days in November 1964.
24 days in December 1964.
23 days in January 1965.
24 days in February 1965.
14 days in March 1965.

It has been argued that casual entries made by Shri Shetty on these days will not attract any responsibility and he will not be entitled to claim either the status of a clerk or clerical wages.

20. I have gone through the entries and the statements and if they are scrutinised carefully they will show that Shri Shetty has done clerical work on the days stated by Shri Pandit. Not only that but in some months he has done clerical work on more days. I do not think that this clerical work can be disposed of as mere casual entries. But it indicates that the writer was as if a regular clerk.

21. Moreover it is not in dispute that it was the practice of the bank to promote members of the subordinate staff in the clerical grade on their passing the high school examinations. It is also an admitted fact that members of the subordinate staff who have been promoted in the post are holding responsible positions in the bank and in view of this existing practice it is quite likely that the agent of the Dana Bunder Branch might have first permitted Shri Shetty to do the clerical work and subsequently asked him to do it in the interest of the institution. Ordinarily Shri Shetty would have been also promoted to the post of a clerk but for the alterations effected by the bank in the rules regarding promotion of subordinate staff. The bank has issued a circular dated the 6th November, 1964 requiring the members of the subordinate staff to put in five years service before absorption as clerks. They altered the previous practice and this change in the rules of the bank appears to be the main cause which has come in the way of Shri Shetty and has given rise to the present dispute and the further question is whether Shri Shetty is entitled to the status of a clerk and a higher salary or compensation.

22. Shri Pandit on behalf of the bank has argued that even if it is conceded that Shri Shetty has done some clerical work he will not be entitled either to the status of a clerk or the salary. He has relied upon the ruling reported in 1963 II LLJ p. 365 in the Eastern Bank's case which is known as the case of the computists—adding machines—in which there was a question about special allowance to the clerks who were operating adding machines for the purpose of making additions mechanically and it was held that the claim was not sustainable. However, I do not think that this ruling will be applicable to the present case. It cannot be ignored that the decision of every case depends upon its own facts. It is clear from this judgment that in their Lordships' opinion the operation of the machine did not call for any special skill or training or efficiency and did not involve any responsibility and as the nature of the work on the adding machine was such that it did not require any special skill or training it was held that they were not entitled to the allowance. In the case in question Shri Shetty who was appointed as a watchman is proved to have been doing the duties of a clerk and godown keeper and the ruling will not be applicable.

23. I have already mentioned the various dates on which Shri Shetty has done clerical work in the bank. It is common experience that in a month leaving aside the weekly offs and holidays there are about 25 or 26 working days. According to the order of reference we have to find whether the services of Shri Shetty were utilised to perform clerical duties upto 15th March 1965. It is clear from the days of working that Shri Shetty has done clerical work for all the days uptil

15 March 1965 in that month. Similarly in January and February 1965 he has done clerical work for the whole of the month. The same is the case about his clerical work in December, November and October 1964 and it can be said without any inconsistency that from September 1964 he was doing clerical duties throughout the month.

24. The entries further show that on an average Shri Shetty has done 15 days clerical work in a month from January 1964 to August 1964 and on an average on 9/10 days in each month from November 1962 to December 1963. I have already stated that leaving the weekly offs and holidays there are about 25/26 working days in a month and considering the number of days it shall have to be held that Shri Shetty's services were utilised for doing clerical work for about 10 days from November 1962 to December 1963 and for half the month from January 1964 to August 1964 and for the whole month from September 1964 to 15 March 1965 and he will be entitled to the status of a full fledged clerk from 1st September, 1964.

25. Shri Pandit has argued that this Tribunal cannot go beyond the terms of reference. Promotion is a function of the management and the Tribunal has no jurisdiction to declare Shri Shetty to have attained the status of a clerk. I have already discussed the work done by Shri Shetty during these 2½ years. He has stated on oath that it was the agent of the bank who had asked him to do the clerical work and his statement together with the work in my opinion is sufficient to prove that he was asked to do clerical duties. The circumstance that the bank did not examine the agent or any officer itself shows the truth of the evidence of Shri Shetty. By the reference this Tribunal has been asked to decide the question whether the services of Shri Shetty were utilised by the management to perform clerical duties and if so to what relief he would be entitled. I have held that the management had utilised the services of Shri Shetty to perform clerical duties and I do not think that by granting the relief and declaring that Shri Shetty should be deemed to be full-fledged clerk this Tribunal would encroach upon the functions of the management or that granting such relief would be out of its jurisdiction. It is not necessary to discuss herein the wide powers of the Tribunal in industrial disputes. It has been observed in the ruling Rohtas Industries Ltd., *v.* Brijnandan Pandey (AIR 1957 S.C.I):—

> "A court of law proceeds on the footing that no power exists in the courts to make contracts and that the parties must make their own contracts. The courts reach the limit of their powers when they enforce the contracts which the parties have made. On the other hand an Industrial Tribunal is not so fettered and may create new obligations or may modify existing contracts. This power is vested in these Tribunals in the interest of industrial peace to promote trade union activities and to prevent unfair labour practice and victimisation by the employers."

Similar observations have been made by their Lordships of the Supreme Court in the case of Bidi Leaves and Tobacco Merchants' Association *v.* State of Bombay (1961 II LLJ 663):—

> "It is well settled that in an industrial adjudication under the provisions of the Industrial Disputes Act, 1947 the Tribunals have wide powers and jurisdiction to make appropriate awards in determining the disputes referred to them. An award made in an industrial adjudication may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony in the industry. Such an award may even alter the terms of employment if it is thought fit and necessary to do so, and the jurisdiction of the Tribunal is not confined to the administration of justice in accordance with law. The Tribunal can confer rights and privileges on the workmen which it considers to be reasonable and proper though they may not be within the terms of the existing agreement. Thus the jurisdiction of an Industrial Tribunal is much wider than that of courts of law and it can always be reasonably exercised in deciding industrial disputes with the object of keeping industrial peace and progress. The principle has been repeatedly asserted by the Supreme Court and the jurisdiction and authority of Industrial Tribunals to deal with industrial disputes in such manner as to ensure social justice can no longer be in question."

In view of these observations of the Supreme Court about the jurisdiction and authority of the Tribunals I do not think that it will be out of the competence

of this Tribunal if otherwise proper to declare that Shri Shetty who has been admittedly doing clerical work from September 1964 to be deemed to be a clerk. I have already observed that there was a practice in the bank to promote the members of the subordinate staff as clerks on their passing the high school examination. Shri Shetty was cross-examined at length in English and he stood the same. It is not the case of the management that Shri Shetty is not deserving to be appointed as a clerk It is also clear from the subsequent correspondence between the parties that the bank had recognised the merit of Shri Shetty and by their letter No. DB-186/67 dated 28th April, 1967 the bank had informed him that he had been selected for promotion as a cashier-*cum-godown* keeper and clearly Shri Shetty is reasonably entitled to the relief of being declared as a full fledged clerk and a clerical pay from the month of September, 1964.

26. It is significant to remember that the bank had issued the circular about the alteration of the conditions of service regarding promotion of subordinate staff in the month of November, 1964. In spite of the circular the bank authorities permitted Shri Shetty to do clerical work. I have found that the bank has utilised the services of Shri Shetty to perform clerical duties from November 1962 and by way of relief he will be deemed to be a full fledged clerk from the month of September, 1964 and he will be entitled to the pay of a clerk from that date. The bank will pay to him the difference from that date and hence my award accordingly.

27. As regards costs this case in my opinion requires special consideration. I have already discussed the work done by Shri Shetty. The contention of the bank that Shri Shetty had surreptitiously made the entries does not deserve any consideration. Shri Shetty was working in almost all the sections of the bank The entries in statements exhibits W-3 to W-5 will show that on 27th February, 1965 he had gone to the godown for effecting deliveries. He had also made entries in the clearing subsidiary register and the savings bank register. He has also made entries in the cash credit clearing subsidiary register. He has also made entries in the clearing subsidiary register No. 2 and in the clearing schedule. Considering this work on one day it is too much on the part of the bank to say that Shri Shetty had surreptitiously made the entries. Shri Shetty could prove his clerical work on taking inspection and making a list of the various entries from the register Considering the time required for the hearing of this case in my opinion it will be proper to direct the bank to pay the union Rs. 400/- as costs of these proceedings.

(Sd.) A. T. ZAMBRE,
Presiding Officer,
Central Government Industrial Tribunal, Bombay.

[No. 51/31/65-LRIII.]

S.O. 1930—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Madras, in the industrial dispute between the employers in relation to the management of Dalmia Magnesite Corporation, Salem and their Workmen, which was received by the Central Government on the 17th May, 1968

BEFORE THE INDUSTRIAL TRIBUNAL, MADRAS

Wednesday the 24th day of April, 1968

PRESENT:

THIRU M. TAJAMMUL HUSSAIN B.A. B.L., INDUSTRIAL TRIBUNAL, MADRAS.

INDSTRIAL DISPUTE NO. 67 TO 1967

(In the matter of the dispute between the workmen and the management of M/s. Dalmia Magnesite Corporation, Salem-5

BETWEEN

1. The General Secretary, Salem District Magnesite Labour Union, Suramangalam, Salem-5.
2. The General Secretary, Magnesite Workers Union, Karuppur Post, (Via) Salem Jn. R.M.S.
3. The General Secretary, Dalmia Magnesite Corporation Employees Union Karuppur, P.O. (Via) Salem Jn. R.M.R.
4. The General Secretary, Salem District Magnesite Thozhilalar Munnetra Sangam, Solampalliam, Suramangalam, Post Salem-5.

5. The Secretary, Salem District Mining Workers' Union, Suramangalam, Salem-5.

AND

The Manager, M/s. Dalmia Magnesite Corporation, Salem.

REFERENCE:

No. 25/11/67-LRI, dt. 14-8-67 of the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) Government of India.

This dispute coming on for final hearing on Tuesday the 2nd day of April 1968 upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru C. Doraiswamy, an Officer of the Emp'oyers Federation of South India for Management and of Thiru N. C. R. Prasad, Advocate for the 1st Union, Thiru G. Samuel, Vice President, Tamil Nad Trade Union Congress for the 2nd Union, Thiru R. Rangaswamy, General Secretary, Tamil Nad (INTUC) for the 3rd Union, Thiru Kattur Gopal, for the 4th Union and the 5th Union not having appeared and this dispute having stood over till this day for consideration, this Tribunal made the following:

AWARD

This is a reference by the Central Government of an industrial dispute between the management of Dalmia Magnesite Corporation, Salem and their workmen in respect of the matter specified in the schedule, which is as follows: "Whether the contract system functioning in the mines and factory of M/s. Dalmia Magnesite corporation, Salem should be abolished and the employees of the contractors be taken by the Corporation without any break in their service and with the pay scales and other amenities as are applicable to its own employees?"

2. The demand is set out in the claim petitions filed by the five Unions. According to the claim statement of the Salem District Magnesite Labour Union, the management is engaged in the mining of magnesite at Salem and also processing the same at their factory there. The management have about 3000 employees through contractors and only 300 direct employees. Out of the 3000 employed through contractors, nearly 2000 are engaged in the mines and about a 100 in their factory. The management only employ about 70 workers as direct employees in their mines and they are the supervisory personnel. Most of the workers who are actually engaged in the production work in the mines are therefore employed only through the contractors and not as direct employees. These workers who are employed by this management through contractors have been working for a long number of years. Their work is of a permanent nature. A number of employees have put in over 5 or 6 years of service. In the case of direct employees there is a broad job classification whereas there is none such in the case of contract employees. Because of the contract system, the contract employees do not get the real benefit of Section 25 F providing for retrenchment compensation and the benefit of Section 25 G which provides for the principle of "last come first go".

3. As early as 1962, the Magnesite Workers' Union raised a dispute for the abolition of the contract system and the management entered into a settlement with that Union saying that this issue could be reviewed after five years. Even though the period of five years has expired, the management have not thought fit to abolish the system. In Salem Magnesite Private Ltd., there are about 2000 contract employees and these are employed direct'y by the management. In M/s. Burn & Co. about 1800 employees are directly employed by the management. From the beginning of the year 1967, there was a demand for the abolition of the contract system and in March, 1967 there were conciliation proceedings before the Assistant Labour Commissioner, and the conciliation failed. The efforts of the workers employed through the contractors benefitted the management considerably and the management should have taken the contract employees as the direct employees of the management and give the pay scales similar to the direct employees of the management, without break in service.

4. The material allegations of the other claim statements are similar to the material allegations in the statement of Union No. 1, and it is not necessary to restate them.

5. The management filed a counter statement traversing the allegations in the claim statements. According to the counter statement, in or about 1962, the Magnesite Workers' Union, *inter alia*, demanded the abolition of the contract system of working in the mines and in the factory. Cocillation proceedings in respect of

the demands made by the Union took place before the Conciliation Officer, Salem, and after the difficulties of the management with reference to the abolition of contract system were pointed out to the union, a settlement under Section 12(3) of the Industrial Dispute Act was arrived at on 31st July 1962 before the Conciliation Officer, in which it was, *inter alia*, provided as follows:

> "(5) Due to certain difficulties experienced by the management, it is not in a position at this juncture to concede the Union's demand for immediate abolition of the contract system. The management, however, agree to abolish the contract system in respect of packing and stacking of dead burnt magnesite by the end of October, 1962. Regarding abolition of the contract system in outer operations, the question will be reviewed at the end of five years after the date of this settlement."

6. The said settlement not having been terminated in accordance with law, the reference to this Tribunal is incompetent and would not confer any jurisdiction on this Tribunal to adjudicate thereon. At or about the time of the said settlement, there was another settlement beween the contractors and the workmen employed under them represented by the magnesite Workers' Union which provided, among other things, for increase in wages. The said settlement also provided that the same was to remain in force for a period of five years from the 1st of August 1962 except on the question of wages, which could be re-opened after the 30th June 1965. Notwithstanding these settlements, which are binding on all the parties to the dispute, in January 1967, a new Union, The Salem District Magnesite Labour Union sent a charter of demands to the management which contained a demand for the abolition of the contract system in the factory and mines of the Da'mia Magnesite Corporation and absorption of the contract workers as "employees" of the management. There were conciliation proceedings before the Regional Labour Commissioner, who reported failure of conciliation to Government on 27th July 1967. While this report was under consideration of the Government of India, on 29th July 1967, the Salem District Magnesite Labour Union issued a strike notice purporting to be under Section 22 of the Industrial Disputes Act. Two other unions also issued similar notices. On 14th August 1967, the Government of India passed an order referring the issue of the abolition of the contract system to this Tribunal for adjudication. On 16th August 1967 there was a strike, which was far from being peaceful.

7. So far as the mines are concerned, contract system is prevalent in removal of over burden and side burden, the mining of magnesite, the loading of magnesite at mines and removal of waste etc. So far as the factory is concerned, the contract system is prevalent in packing, stacking etc. The magnesite mines belonging to the management extend to two square miles and batches of workmen are employed all over this area. These workmen are supervised by the contractors themselves and if contract system is to be abolished, the management will be obliged to employ a large number of supervisors to supervise the workers, which will inevitably increase the cost of magnesite which is already unable to stand the strain of competition in the international market. The demand of the Unions that the contract workers should be paid on the same basis as other workmen of the management is unjustified. It is not admitted that the workers employed by the contractors are getting low wages. The wages paid to the contractors labour is covered by settlement between the contractors and their workmen. The relationship between the contractors and the management is governed by agreements with different contractors.

8. At the outset it is necessary to dispose of the preliminary objection raised by the management regarding the jurisdiction of this Tribunal, to adjudicate upon the matter referred to by the Government for adjudication. Documents were marked by the parties and the Secretary of the Union was examined to prove a document, which was not admitted by the management.

9. The contention of the management is that there was settlement under Section 12(3) of the Industrial Disputes Act between the management and the workers on 31st July 1962 before the Conciliation Officer, and that settlement was to be in force for a period of 5 years. According to that settlement, the question of the abolition of the contract system could be reviewed at the end of 5 years, after the date of the settlement and the settlement not having been terminated in accordance with law, the reference to this Tribunal is incompetent. A copy of that settlement was marked as Ex.M. 1, Clause 5 of that settlement is as follows:

> "Due to certain difficulties experienced by the corporation it is not in a position at this juncture to concede the Unions' demand for immediate

abolition of contract system. The corporation however agrees to abolish the contract system in respect of packing and stacking of deadburnt magnesite by the end of October, 1962. Regarding abolition of the contract system in other operations the question will be reviewed at the end of five years from the date of this settlement."

10. According to Section 19(1) of the Industrial Disputes Act, "a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute." According to Section 19(2) of the Industrial Dispute Act, "such settlement shall be binding for such period as is agreed upon by the parties and if no such period is agreed upon, for a period of six months (from the date on which the memorandum of settlement is signed by the parties to the dispute), and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement".

11. According to the management, no notice as contemplated in section 19(2) was given terminating the settlement. The intention of the parties to the settlement was that with regard to the question of abolition of contract system, this matter should not be taken up for a period of 5 years from 31st July 1962. The management referred to another settlement Ex. M. 2, which was arrived at between the contractors and the Magnesite Workers' Union, which was a party to Ex. M. 1. Para 5 of Ex. M. 2 is as follows: "In view of this settlement, the Union agrees that the contract system prevailing in the Magnesite mines shall continue during the period of this agreement." The agreement M. 2 was admitted to be in force for a period of 5 years from 1st August 1962. In Ex. M. 3, which is a copy of a letter from the President of the Magnesite Workers Union to the Regional Labour Commissioner (Central), Clause 6 of M. 2 is extracted. Ex. M. 4 is a pamphlet circulated to the workers, in which two rival unions were accused of having agreed that contract system should continue till 1967. Ex. M. 5 is also a similar pamphlet. Ex. M. 6 is a copy of the letter to the Regional Labour Commissioner (Central), pointing out that as per the agreement dated 31st July 1962 the contract system was to be continued till 31st July 1967 and can be taken up for review only after that date. In Ex. M. 7, reference was made to the agreement Ex. M. 1 dated 31st July 1962 and it was pointed out that under the settlement, the contract system was to be in force till June, 1967. "June, 1967" is evidenly a mistake for "July, 1967". Ex. M. 8 is a strike notice issued by the Salem District Magnesite Labour Union. In the annexure it was pointed out that the management had entered into an agreement with another Union (Regd. No. 863) in July 1962 to the effect that the contract system would be abolished after a lapse of 5 years (after July 1967).

12. The Secretary of the Salem District Magnestic Labour Union was examined to prove a document which the management did not accept. The document, was said to have been sent by certificate of posting.

13. Ex.W.3, referred to by Periathambi (W.W.1) is a copy of a letter said to have been written by the Secretary, Salem District Magnesite Labour Union on 27th June 1967 to the Manager. Reference is made in that letter to certain conversation between one M. R. Venkataraman and the manager of the corporation. At the end of the first paragraph of the letter, it is stated thus: "Therefore, our Committee has again considered this question and as per its decision, we hereby give you notice that the existing agreement of 1962 (extension of contract system for five years) is hereby terminated and that it will have no binding on us in future."

14. Even though the counter statement in which the preliminary objection was taken was filed as early as in October, 1967, no rejoinder was filed by this Union referring to this disputed document, which was produced on 15th March 1968. All that can be inferred from a certificate of posting is that some letter was posted to the addressee. It is strange that the letter was not referred to in the claim-statement or by filing any rejoinder. It was admitted by the General Secretary, Periathambi that in October, 1967, he got a copy of the counter statement and had the counter statement read out and explained to him. Before 15th March 1968, he did not give notice to the management to produce the original of Ex.W.3 According to him, only strike notices were being sent by registered post. Even in Ex. W.3, there was a threat of direct action if the management did not concede the demand of the workmen for abolition of contract system, as early as possible. It is strange that the Secretary did not send such an important communciation to

the management by registered post, when a threat of strike was contained in it. The Secretary should have treated it as a notice of strike sought to be served on the management. Either this letter could have been tendered to the management directly, or could have been sent by registered post by way of abundant caution. The certificate of posting merely shows that a letter was posted in the Salem Junction R.M.S. on 27th June 1967 and does not prove anything more. As contended on behalf of the management, it is doubtful that such an important letter containing a threat of direct acion would have been sent by certificate of posting instead of by registered post.

15. I will now proceed to consider the contention that even assuming that such a letter was sent, it would not make any difference in the contention of the management that there was no valid termination of the agreement as contemplated under Section 19(2) of the Industrial Disputes Act. It is necessary to refer to the decisions relied on by the management in support of its contention. One of the decisions is "Deccan Tile Works *Vs.* Their Workmen" reported in 1960 II L.L.J. 298. There was a general settlement between the owners of tiles factories and their workmen under Sec 12(3) of the Industrial Disputes Act fixing the rates of wages. Such settlement came into force on 5 June 1957 The management of one such tiles factory closed the factory for some period for effecting certain repairs and making some structural alterations. On 4th November, 1957 the management informed the concerned workmen that they would be given employment on the reopening of the factory if they were agreeable to receive wages lower than the wages payable to them under the settlement. The industrial dispute regarding the refusal by the management to take back into service the concerned workmen on the rates of wages provided for under the settlement was referred for adjudication. The labour court passed an award directing the reinstatement of all the concerned workmen with back wages from the date of reopening of the factory at the rates as provided for under the settlement.

16. It was held that the management was not within its rights in terminating and unilaterally repudiating the settlement within the period of six months of the date on which it came into force. On behalf of the respondent, reliance was placed on the observations at page 300: "As pointed out by the learned counsel for the respondent ....., what the section says is that the agreement should be in force for six months and it is only after the expiry of six months that the question of two months' period would arise The agreement in this case, Ex.A1, was made on 5 June 1957. That being so, it would be in force for six months from that date till 4 December 1957. The notice terminating this agreement was given on 17th November 1957. Obviously the management was not within its rights in terminating and unilaterally repudiating Ex.A1. On this part of the case there is nothing to call for the modification of the view taken by the labour court'

17. It is argued on behalf of the management that even assuming that Ex.W.3 is to be construed as a valid notice of termination of the settlement the order of reference having been made before the expiry of two months from the date of W 3, the reference would be invalid. The original of Ex. W 3 might have reached the management on 28th June 1967. If the original of Ex. W3 had reached the management on 28th June 1967 the settlement continued to be binding on the parties till 27th August 1967 The reference was made on 14th August 1967, before the expiry of 2 months from 28th June 1967 and the same would not be valid.

18. The learned advocate for the respondent relied on a decision of the Supreme Court in "Bangalore W.C.S. Mills Vs. Their Workmen (S C) reported in 33 F.J.R. 254 It has been held therein as follows: "An intimation which is claimed to have been given as contemplated by section 19(6) of the Industrial Disputes Act, 1947, regarding the termination of an award must be fixed with reference to a particular date so as to enable a court to come to the conclusion that the party giving the intimation has expressed its intention to terminate the award. Such a certainty regarding the date is essential because the period of two months after the expiry of which the award will cease to be binding on the parties will have to be reckoned from the date of such clear intimation. An intention to terminate an award or a settlement cannot, therefore, be gathered from the various correspondence that passed between the employer and the workmen, but must be traceable to a particular letter or representation made by the concerned party. Where a settlement covering matters of leave is subsisting and binding on the parties, the workmen have no right to make any demands regarding leave facilities and an Industrial Tribunal will not have jurisdiction to consider such matters. Where, therefore, a settlement was terminated by a notice issued by the workmen under Section 19(2) of the Industrial Disputes Act, 1947, on August 14, 1961,

it will not be open to the workmen to contend that the settlement had been terminated by a letter dated June 26, 1961 making demands regarding matters covered by the settlement.

19. Mr. Prasad, the learned advocate for one of the Unions stated that notice of strike given in March, 1967 amounted to repudiation of the settlement. This contention cannot be accepted for the reason that the strike notice was given during the period when the settlement was binding and was not terminated according to law. Mr. Prasad further contended that in any event the management had waived the notice and he relied on the decision in Western India Match Company's case reported in 1962 I.L.L.J. 661.

20. The decision of the Supreme Court in "Workmen of Western India Match Co., Ltd, Vs. Western India Match Co., Ltd.", (1963) 22 F.J.R 395 was explained in the Supreme Court case reported in 33 F.J.R 254. Reference is made to Western India Match Company's case at pages 258 and 259, and it is as follows: "We will then consider the question, as to whethe there has been a termination of the award, exhibit M-6 in the manner pleaded by the Union. It cannot be over emphasised that an intimation, claimed to have been given regarding the termination of an award, must be fixed with reference to a particular date so as to enable a court to come to the conclusion that the party, giving that intimation, has expressed its intention to terminate the award Such a certainty regarding date, is absolutely esential, because, the period of two months, after the expiry of which, the award will cease to be binding on the parties, will have to be reckoned, from the date of such clear intimation. It is also necessary to state that, in this case, the High Court and the Tribunal, have proceeded on the basis that the decision of this court in THE WORKMEN OF WESTERN INDIA MATCH CO, LTD., VS. THE WESTERN INDIA MATCH CO., LTD., (1963) 22 F.J.R. 395, supports the proposition that an inference of an intention to terminate an award or a settlement, can be gathered from the various correspondence that passed, between the management and the union. The decision, in our opinion, does not lend any support to such a view. From the facts of that case, it is seen that there was a settlement, between the parties on 29th April, 1955, and there was a charter of Demands, given by the workmen, on 25th January, 1957. On 14th January, 1958, the Government of West Bengal, referred to the Industrial Tribunal concerned, for adjudication, the demands made by the workmen. Earlier to that date, on 29th March, 1957, the management had sent a reply to the union that the Charter of Demands, of 25th January, 1957, could not be considered, inasmuch as the settlement of 29th April, 1955, had not been validly terminated, under the Act In answer to that communication, the union wrote, on 8th April, 1957, that the various representations, made by it, to the management, and the presentation of the Charter of Demands, amounted to a notice of termination of the settlement In dealing with this point, it will be seen that this Court observes that no formal notice, as contemplated by section 19(2) of the Act, has been given by the Union But, this Court, ultimately, held that though no such formal notice was given, the letter of 8th April, 1957, written by the union, could itself be construed as notice, within the meaning of section 19(2), and therefore, the Tribunal had jurisdiction to adjudicate upon the claim, as the reference was made, the State Government, long after the expiry of two months from 8th April, 1957.

21 Even assuming that on 27th June 1967, the Union sent the original of Ex. W.3 to the management and that document could be construed as notice of termination of settlement under Section 19(2) of the Industrial Disputes Act, the settlement continued to subsist till 27th August, 1967 and this reference made on 14th August 1967 during the subsistence of the settlement is not valid.

22. Mr. Prasad invited my attention to another decision of the Supreme Court reported in 1966 I L.L.J. 1 "Ahmedabad Mill Owners Association Vs. Textile Labour Association." That decision is not applicable to this case as it was based on Section 73 of the Bombay Industrial Relations Act, 1947 and the section deals with the powers of the State Government to make a reference under that Act. As contended on behalf of the respondent, the decision of the Supreme Court Reported in 33 F.J R 254 is applicable to the facts of this case. When there is a subsisting settlement binding on the parties, the Tribunal will have no jurisdiction consider the matters covered by the settlement.

23. As the settlement under Section 12(3) of the Industrial Disputes Act, which was arrived at on 31-7-52 before the Conciliation Officer has not been terminated in accordance with law, the reference to this Tribunal is incompetent and this Tribunal has no jurisdiction to adjudicate upon the matter referred for adjudication. An award is passed accordingly. Parties will bear their own costs.

(Sd.) M. TAJAMMUL HUSSAIN,
Industrial Tribunal

List of witnesses examined for the worker

1. Thiru A. Periathambi . . . . . 2-4-68 Ex. WW1

List of witnesses examined for the management :

Nil

List of Documents marked:

For the worker :

1.	Letter from The Regional Labour Commissioner (C) Madras to the Secretary to the Government of India, Ministry of Labour, Employment and Rehabilitation, New Delhi	27-7-67	Ex. W1
2.	Issue of abolition of contractors in the Dalmia, Magnesite Corporation Ltd., Salem.	30-4-67	Ex. W2
3.	Letter from General Secretary to the Manager, Dalmia Magnesite Corporation, Salem-5	27-6-67	Ex. W3

For the Management :

1.	Agreement reached between the workmen and the management before the Regional Labour Commissioner .	31-7-62	Ex. M1
2.	Agreement between the mining contractors and the Magnestite Workers' Union	1-8-62	Ex. M2
3.	Magnesite Workers Union to the Regional Labour Commissioner	17-8-65	Ex. M3
4.	Pamphlet issued by S.D.M.L.U.	7-6-66	Ex. M4
5.	Pamphlet issued by S.D.M.L.U.		Ex. M5
6.	Letter from Management of Dalmia Magnesite Corporation to Regional Labour Commissioner	21-6-67	Ex. M6
7.	Letter from S.D.M.L.U. to R.L.C.	26-3-67	Ex. M7
8.	Strike notice issued by the Salem District Magnesite Labour Union	29-7-67	Ex.
9.	Letter from The Regional Labour Commissioner (Cantral), Madras to The Manager, M/s. Dalmia Magnesite Corporation, Salem.	30-4-67	Ex. M9

Note :—The parties are directed to take return of their document/documents within six months from this date.

[No. 35/11/67-LRI.]

New Delhi, the 24th May 1968

S.O. 1931.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award Part III of Shri Salim M. Merchant, Arbitrator in the dispute between the management of the Hindustan Zinc Limited, Udaipur and their workmen represented by the Zawar Mines Mazdoor Sangh, Udaipur, which was received by the Central Government on the 4th May, 1968.

BEFORE SHRI SALIM M. MERCHANT, ARBITRATOR

Arbitration in the Industrial Dispute

BETWEEN

The Hindustan Zinc Limited

AND

Their Workmen

(represented by the Zawar Mines Mazdoor Sangh)

PRESENT:

Shri Salim M. Merchant, Arbitrator.

APPEARANCES:

For the Company.—Shri Babubhai Patel, Advocate, Supreme Court with Shri A. S. Bhandari, Financial Adviser and Shri U.S. Bhatnagar, Chief Personnel Officer.

For the workmen.—Shri B. L. Sengupta, Advocate, Supreme Court, with Shri B. Choudhury, General Secretary, Shri B.B.L. Tripathi, President and Shri R. Shivappa, Secretary, Yawar Mines Mazdoor Sangh.

INDUSTRY—Zinc Mining STATE—Rajasthan.

Dated at Bombay this 1st day of May, 1968

AWARD (PART III)

1. By an agreement under Section 10A of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter referred to as the Act), the dispute between the workmen, represented by the Zawar Mines Mazdoor Sangh, Udaipur, and the Hindusthan Zinc Limited, Udaipur, the parties above-named, referred to my sole arbitration the industrial disputes in respect of the 8 subject-matters specified in that agreement:

2. By my Award Part II dated 27-10-1967, I disposed off demands Nos. 2, 5, 6, 7. The four demands that survive for arbitration are Nos. 1, 3, 4 and 8, which are as follows:—

1. Whether the demand of the Zawar Mines Mazdoor Sangh for payment of bonus to the workmen as per the long term settlement dated 8th April, 1960 is justified? If not, to what relief are the workmen entitled?

3. Whether the demand of the Zawar Mines Mazdoor Sangh for payment of dearness allowance according to Central Government rates, and then its linking with the consumer price index is justified? If not, to what relief are they entitled?

4. Whether the existing grade of the workmen of Zawar Mines and Head Office of the Hindusthan Zinc Limited, Udaipur, need revision, If so, to what extent and from what date?

8. Negotiations are in progress as regards Item No. of the Memorandum of Settlement and if no settlement is arrived at mutually, the cases will be also referred to arbitration for decision.

3. The hearing on demands Nos. 1, 3 and 4 has concluded, and by this Award Part III, I am disposing off demands Nos. 3 & 4 and am giving directions on Demand No. 1.

4. In regard to demand No. 8 under reference, the parties are negotiating for a settlement, and if negotiations, fail, I shall hear the submissions of both parties on the merits.

5. Before dealing with demands Nos. 3 & 4 on their merits, I may state that by my interim award Part I dated 5th September, 1967, I granted the workmen of the Company's Zinc Mines and the Company's Head Office at Udaipur covered by this reference and the Workmen covered by the arbitration reference relating to the Smelter Plant, an interim increase of Rs. 4/- p.m. with effect from 1st July, 1967. By my award Part II dated 27th October 1967, I also granted to the above-stated workmen the following interim monthly increase in dearness allowance with effect from 1st September, 1967.

Employees drawing basic pay upto Rs. 120	.. Rs. 12/-.
Those drawing from Rs. 121/- to Rs. 220/-	.. Rs. 15/-.
Those drawing from Rs. 221/- to Rs. 500/-	... Rs. 18/-.

I. my said Award Part II on Demand No. 3, I observed as follows:—

"I am of the opinion that in deciding the demand for dearness allowance in the form in which it is made without relation to the wage structure which will ultimately be evolved under Demand No. 4, might lead to anamolies. It is desirable that when in one and the same dispute there is a demand for revision of the existing system of payment of dearness allowance and the wage structure, the two should be considered and decided together and not in isolation of one another, because the total emoluments of the workmen made up of basic pay and dearness allowance would always have to be borne in mind".

6. I shall, therefore, deal with demands Nos. 3 and 4 together. It is, however, necessary at this stage to give a brief chronological account of how the existing wage-structure prevailing in the Zawar Mines has come to be evolved.

7. The Zawar Mines were started in 1945 by the Metal Corporation of India (hereinafter for brevity's sake referred to as 'the M.C.I.). The M.C.I. had its head office at Calcutta and a lead smelting factory at Tundoo in Bihar. As stated earlier, the present Company's Head Office is now at Udaipur. The Union in Para 16 of its written statement dated 18th June 1967 has stated that this Company employees about 2,560 workers in its different establishments in India as shown below:—

(1) The Zawar Mines	1,500
(2) The Zinc Smelting Factory at Dabari, Udaipur	400
(3) Lead Smelting Factory at Tundoo, Bihar	600
(4) Head Office, Office at Calcutta and other establishments	60
Total	2,560

Since then after the Zinc Smelter Factory having gone into production, the number of workmen at that factory has increased considerably and the number of workmen at present employed there is 959 as stated by the parties in their joint statement dated 18th April 1968.

8. On 22nd August 1956, the workmen of the Zawar Mines represented by the Zawar Mines Mazdoor Sangh and the Management of the M.C.I. Ltd., referred an industrial dispute to the sole arbitration of Shri Mohan Lal Sukhadia, the then, as now, the Chief Minister of Rajasthan. As many as 22 demands were referred to Shri Sukhadia's arbitration, who, by his Award, dated 21st September 1956 on the question of wages, granted the following reliefs. He restored the suspended increments for the respective years to those to whom the Company used to grant increments previously. On the demand for a 4 per cent rise in the wages of all the employees of the Zawar Mines, Shri Sukhadio observed and directed as follows:—

> "Considering the financial position and other relative matters, I think it fit to give a 4 per cent increase in addition to the 8 per cent increase already sanctioned by the Company to all the daily rated workers, but this will not bar the workers from re-agitating the issue of wages as soon as the financial position of the Company is improved. I, thtrefore, direct accordingly."

The Company was then granting attendance bonus to all the daily rated workmen drawing upto Rs. 2 and 8 annas per day on the basis of 24 days attendance in a month. The Union's demand was that they should be paid attendance bonus on 22 days attendance. At the hearing before the Arbitrator, the Management agreed that whilst giving attendance bonus, absence due to accident, authorised leave and absence for which explanation is accepted by the Company, would be treated as attendance for the purposes of attendance bonus. It was, however, agreed that this facility would be extended to all those daily rated employees drawing upto Rs. 4/- per day but not residing in the Zawar Mines and Shri Sukhadia directed accordingly. Shri Sukhadia also awarded profit sharing bonus at the rate of 1½ months wages for the years 1954-55 and 1955-56. After the Sukhadia award there were certain agreements entered into the M.C.I. Limited and the Sangh.

9. Later, another industrial dispute between that M.C.I. Limited and its workmen at the Zawar Mines was referred by the Central Government by Order dated 16th August, 1958 for adjudication under section 10 of the Industrial Disputes Act, 1947 to Shri P.D. Vyas, the then Central Government Industrial Tribunal, Nagpur, at Bombay. The two subject-matters referred for adjudication to Shri Vyas were (i) what should be the wage-structure for the various categories of employees in the mines and (ii) whether bonus should be given for the year 1956-57 and if so, at what rate? Shri Vyas awarded 2½ month's wages as bonus for the year ending 31st March 1957, and on the demand for suitable wage structure, after referring to the Sukhadia award, observed as follows:—

> "Even in the Company's Tundoo Factory in Bihar we find that the minimum wage is Rs. 52/- against Rs. 32·50 in Zawar Mines. It is common ground between the parties that there is no system of any dearness

allowance and what is being paid is only a consolidated wage, which in the beginning was so low as 8 annas. Sometime when in 1952, the minimum wage was fixed in the industry of stone-cutting and stone-breaking, the Management proceedings on the same line, fixed Rs. 30/- for males and Rs. 20/- for females per month on 26 working days and these rates have since been raised to Rs. 1-4-0 for males and 14 annas per female per day as stated above, so as to amount to Rs. 32·50 and Rs. 22;75 per month of 26 working days."

Referring to the Sukhadia award, Shri Vyas observed:—

"Shri Sukhadia while making his award in respect of a percentage increase gave some interim-relief having felt that there was some improvement in the financial condition of the Company, leaving it open to the workers to further-re-agitate for revision if the financial position of the Company appreciately improves."

After referring to the principles laid down by the Honourable Supreme Court, in the case of Express Newspapers Ltd. and another and the concepts of living wage, fair wage and minimum wage as they are laid down and the consideration of the capacity of the industry to pay, Shri Vyas felt that that was not the proper time to undertake the task of regulating revision of the wage structure on a scientific basis, but at the same time it could not be said that the financial position is such as to permit the continuance of the existing low level of wages, which did not even come upto the minimum wage, for which purpose the paying capacity is irrelevant. Shri Vyas, therefore, in the concluding para of his award, para 16, observed:

"In my opinion, instead of disturbing the existing wage rates, the same should for the time be further supplemented by an additional payment in the shape of dearness allowance at a flat rate of Rs. 20/- so that the lowest paid worker does not get less than Rs. 52.50 and no distinction should be made between the male and female workers. This is entirely within the Company's paying capacity ond I thus direct that the existing wages for the workers shall be further supplemented by an additional payment in the shape of dearness allowance at a flat rate of Rs. 20/- so that the lowest paid workmen, male or female, do not receive less than Rs. 52·50 per month of 26 working days with effect from the date of the reference to him, *i.e.* from 16th August, 1958."

10. The M.C.I. Limited went in appeal by special leave from this Award of Shri P. D. Vyas to the Honourable Supreme Court, which granted a conditional stay upon the M.C.I. paying Rs. 12:50 paise out of the Rs. 20/- awarded, as interim payment with effect from 11-5-1959.

11. Thereafter, the Sangh made certain demands and served a strike notice dated 10-1-1960. Settlement was reached on 9-2-1960 by which an additional dearness allowance of Rs. 7·50 per month was paid with effect from 1-1-1960, and it was agreed to hold negotiations later for a long term settlement.

12. Later, an agreement was reached in conciliation, between the M.C.I. Limited and the Sang, on 8th April 1960 (copy of which is on record as Ex. U. 1) which *inter-alia* provided that the extra dearness allowance of Rs. 7.50 which the Company was paying since 1-1-1960 under the agreement dated 9-2-1960, would form part of the dearness allowance of Rs. 20/- and would be paid as arrears for the period from 11-5-1959 to 31-12-1959. Under the terms of the settlement, the pending appeal before the Honourable Supreme Court, was compromised in terms recorded in Annexure A to the settlement of 8-4-1960. Annexure A recorded the terms regarding dearness allowance as stated above and also compounded the Vyas award of bonus for 2-1/2 month's for the year 1956-57 on the Company making *ex-gratia* payment of 3/24th of the wages earned by the workmen during that period.

13. The settlement of 8th April, 1960 was intended to be a long term agreement. It evolved wage scales for monthly-rated-monthly-paid workmen (M.R.M.P. Workmen) and daily-rated-monthly-paid workmen (D.R.M.P. Workmen) as stated in Annexure B to the agreement. The M.R.M.P. Workmen were divided into in all XI categories, the lowest category being Grade XI with a basic wage scale of Rs. 80—5—150 for Watch and Ward Supervisors. The next higher grade was Grade X, with a wage scale of Rs. 90—7.50—150—10—210 for categories like timekeepers, junior clerks, despatchers, compounders, typists, nurses, canteen supervisors, surface supervisors, etc. The grades for the M.R.M.P. workmen covered

both by the technical and the clerical staff of the Zawar Mines and the pay scale for Grade I was Rs. 250—15—310—17.50—380—20—400—EB—20—500 for categories like Accountants, Assistant Medical Officers, Office Superintendents, Mines Foremen, etc. The agreement provided that both the M.R.M.P. and the D.R.M.P. workmen working underground would be paid an underground allowance of 10 per cent of their basic salary or wage. These rates of underground allowance are stated in notes appearing below the pay and wage-scales for the M.R.M.P. and the D.R.M.P. workmen. It is further necessary to state that the settlement provided that the wage structure as agreed would remain in force upto 31st March 1968 and would not be re-opened during that period. There was a specific provision that the minimum wage of the lowest category of the daily-rated-monthly-paid categories i.e. categories Nos. IV and V would be subject to review after 31st March, 1963. The same provision was also made with regard to dearness allowance for the workmen covered by the settlement. The dearness allowance fixed under the agreement was, however, Rs. 20/- as awarded by Shri P. D. Vyas. The agreement also provided the payment of profit-sharing bonus for each of the years 1959-60 to 1965-66 at the *ad-hoc* rates provided in annexure C to the agreement. I may here state that for the years 1964-65 and 1965-66 the rates of profit-sharing bonus were 1/6th and 9/48th of the basic wage and salary earned by the workmen during those two respective financial years. The agreement of 8th April, 1964 also grants several service benefits to the workmen, such as supply of quarters and payment of house-rent to certain categories of workmen, provision of a hospital and a school for the miners and provision of leave under the Mines Act. The agreement also provided for grant of certain number of paid festival holidays. The agreement also recorded the terms of settlement of the demands under the strike notice dated 10th January, 1960.

14. Under the terms of that settlement, the scales of pay for the lowest Grade V.D.R.M.P. worker was fixed at Rs. 1.50—0.12—2.22 and for Grade IV it was fixed at Rs. 1.65—0.15—2.10—0.20—2.90—EB—0.20—3.50. Thus under the long term agreement of 8th April, 1960 the lowest paid surface worker in the Zawar Mine was entitled to basic pay of Rs. 1.50 per day *i.e.* Rs. 39/- for the month of 26 working days and dearness allowance of Rs. 20/- per month, *i.e.* total remuneration of Rs. 59/- per month.

15. But to continue, by agreement dated 28th March, 1963 (copy filed by Co. at hearing on 22nd November, 1967) a further increase in dearness allowance of Rs. 10/- p.m. was granted, with effect from 1st February, 1963, raising it to Rs. 30/- p.m. By the same agreement, the Grades IV and V of the D.R.M.P. categories were revised as under, other conditions remaining the same. It will be noticed that the revision consisted in raising the maximum of Grade IV and of Grade V.

Grade IV Rs. 1.65—0.15—2.10—0.20—2.90—EB—0.20—3.90.

Grade V Rs. 1.50—0.22—2.34—0.13—2.60.

By that agreement a gratuity scheme was approved and amendment was also made in the P.F. Rules—Clause 43. By another agreement dated 13th March, 1965, out of this amount of Rs. 30/-, Rs. 20/- p.m. were merged in the basic pay, with effect from 1st January, 1965, bringing the minimum basic wage of the lowest paid Grade V.D.R.M.P. Workmen to Rs. 59/- which is his present minimum basic pay. It was also agreed that all workmen drawing upto Rs. 500/- p.m. as basic salary and or wages prior to the merger were to be given a flat rise of Rs. 12/- p.m. as dearness allowance with effect from 1st January, 1965 in lieu of all claims, including linking of dearness allowance upto 31st December, 1964. In other words, all monthly rated were to get dearness allowance of Rs. 22/- p.m. and all daily rated of 85 paise per day with effect from 1-1-1965. It may also here be stated that the minimum wage of the lowest paid unskilled worker at the zinc smelter plant was fixed at Rs. 2·40 paise per day. The existing workmen under that category were to be given an increase of Rs. 0·25 paise per day or the difference between the new minimum and their existing wages whichever may be higher. The Company in its written statement dated 28-6-1967 has stated that "it was further agreed that the dearness allowance was to be linked up and adjusted with the rise and fall in the cost of living index at the rate of 60 paise per points' rise after 31-12-1964. It will thus be seen that the cost of living was neutralised almost fully on 1st January 1965. This statement, has, however, in my opinion rightly been challenged by the Union. It cannot be said on any principle that the dearness allowance paid by the Co. as on 1-1-1965 had almost fully neutralised the rise in the cost of living. Besides, if the suggestion is that the total wages

(basic + dearness allowance) paid to the workmen as on 1-1-1965 was adequate, that also was not true on any accepted principles.

16. But to continue, from 1-11-1965 a further increase in dearness allowance of Rs. 10/-, Rs. 13/- and Rs. 16/- per month was granted under Memorandum dated 8-6-1966, bringing the deaness allowance for the three slabs of basic pay to Rs. 32/-, Rs. 35/- and Rs. 38/- respectively as shown below. Therefore, on 1-11-1965 the dearness allowance was as follows:—

Slabs of Basic Pay	Dearness allowance per month
Basic pay Rs. 120/- and below	Rs. 32/- d.a.
Basic pay Rs. 121/- to Rs. 230/-	Rs. 35/- d.a.
Basic pay Rs. 231/- to Rs. 520/-	Rs. 38/-d.a.

Thereafter, the following further increases in dearness allowance were granted at the rate of 60, 78 and 96 paise respectively for each point's rise above Index No. 171 of the All India Consumer Price Inder No. (base 1949-100) for the 3 slabs of Basic Pay stated above.

Date	Index Nos.	Basic pay slab Rs.	Amount Rs.
1-7-66 . .	171 to 177 (6 points)	Rs. 120/- and below	3·60 @ 60 p.
		Rs. 121/- to 230/-	4·68 @ 78 p.
		Rs. 231/- to 520/-	5·76 @ 96 p.
1-1-67 . .	177 to 192 (15 points)	Rs. 120/- and below	9·00
		Rs. 121/- to 230/-	11·70
		Rs. 237/- to 520/-	14·40
1-7-67 . .	192 to 202 (10 points)	Rs. 120/- and below	6·00
		Rs. 121/- to 230/-	7·80
		Rs. 230/- to 520/-	9·60

Total d.a. as on 1-7-67
120/- and below @ = Rs. 50·60
121/- to 230/- = Rs. 59·18
231/- to 520/- = Rs. 67·76

17. The Union's contention in respect of the increases granted with effect from 1st November 1965 is that the increase in dearness allowance of Rs. 10/- Rs. 13/- and Rs. 16/- respectively, were interim increases and not based on any principle, that those were *ad-hoc* increases subject to final decision; that the Company instead of signing the minutes of discussions held on 8th June 1966 preferred to issue the letter dated 29th June 1966, containing unilateral decisions; that the Union had never accepted that increase in Dearness Allowance over 171 points of the All India Consumer Index No. (1949-100), would be neutralised at the rate of 60 paise per point, and the Union's objection was conveyed in course of a discussion held between the Chief Administrative Officer of the Company and the General Secretary of the Union, immediately on receipt of the letter and that the Chief Administrative Officer assured him that all the commitments would be fulfilled after the take over of the charge by the New Managing Director; that the Union had conveyed its dissatisfaction by its letter written in August 1966 (copy Annexure S.3 to the Union's written statement dated 17th July 1967); that the Company was aware of this as no attempt was made to implement the Company's unilateral decision till the date the Union submitted its charter of demand, and that the Company's first offer to grant proposed increased of Rs. 3·40 Rs. 4·68 and Rs. 5·76 in dearness allowance to the three different wage groups was accepted only after the agreement dt. 3/4th November, 1966, to refer the whole question of dearness allowance to arbitration, was agreed to. In support of this the Union has

relied upon a copy of its letter addressed to Shri Mohanlal Sukhadia, the Chief Minister of Rajasthan and copy of Resolution adopted by the General body of the Union on 13th October 1966 (Annexure T and T1 to the Union's written statement dated 17th July 1967). The Union had also refused to accept the dearness allowance of Rs. 9.00, Rs. 11.00 and Rs. 14.00 which the Company had offered it from 1st January 1967, and it was in fact accepted at a much later date.

18. In my opinion, no useful purpose would be served by going into the merits of this controversy. I am, however, satisfied that the rate of neutralisation of 60 ps. per point's rise for basic pay upto Rs. 120 must be held to be adequate for the reasons stated later. I am in coming to this conclusion taken into consideration the fact as stated at the hearing before me on 11th April 1968 by Shri B. Choudhry the Secretary of the Union, that recently in his capacity as Secretary of the Union representing the workmen of the Khetri Project he has for the D.R.M.P. Workmen of that project getting basic pay upto Rs. 4.49 per day agreed to payment of dearness allowance at the rate of 60 ps. per point's rise above index No. 177 and for the D.R.M.P.'s getting upto Rs. 4.50 and above per day dearness allowance at the rate of 78 ps. per point's rise, which are virtually the rates of dearness allowance at present paid by this Company to its employees in the first two slabs of Basic Pay at the Zawar Mines and the Smelter Plant.

19. Subsequently, by my said interim award Part I, dated 5th September 1967, I awarded a flat increase of Rs. 4/- with effect from 1st July 1967 and by my second interim award dated 27th October 1967, with effect from 1st September 1967, I granted interim increase in dearness allowance of Rs. 12/-, Rs. 15/- and Rs. 18/- respectively, for the aforesaid three basic wage slabs. Therefore, with effect from 1st September 1966, with the basic wage of Rs. 59.02 per month (being the minimum of the daily wage scale of Rs. 1.50-0.12-2.22 for Grade V fixed under the agreement of 8th April 1960) the lowest paid employee in the Zawar Mines on Index No. 202 got a total emolument of Rs. 59.02 Basic Pay Rs. 62.60 as dearness allowance plus Rs. 4/- flat increase by way of interim relief by my award Part I, thus making a total amount of Rs. 125.62 per month. The dearness allowance of the workmen in the second Pay slab of Rs. 121 to Rs. 230 was raised to Rs. 74.18 and of the workmen in the 3rd pay slab from Rs. 230 to Rs. 520 was raised to Rs. 85.76. In addition, employees in both these slabs are also entitled to the Interim increase of Rs. 4/ granted by me by my Interim Award Part I with effect from 1st July 1967. Thereafter upon the average of the Index No. for the six monthly period July to December, 1967 having risen by 15 points and having reached the figure of 215, the employees of the Zawar Mines are since 1st January 1968 under the existing rates of neutralisation, being paid the increases in dearness allowance shown in column two and the total dearness allowance shown in column three.

(1) Basic Pay Slab	(2) Dearness Allowance	(3) Total D.A.
Upto Rs. 120/-	Rs. 7·80	Rs. 70·40
Rs. 121 to 230	Rs. 10·14	Rs. 84·32
Rs. 231 to Rs. 520	Rs. 12·48	Rs. 98·24

20. It is necessary at this stage to give a short account of how the Zawar Mines came to be acquired by the Hindusthan Zinc Limited (hereinafter referred to as 'the Company'), and its present financial position. As I have stated earlier these mines were started in 1945 by the Metal Corporation of India Limited (M.T.I. Ltd.), a company in the private sector having its registered office in Calcutta. The concern was acquired by the Government of India with effect from 22nd October, 1965 under the Metal Corporation of India (Acquisition of Undertaking) Act 1966, to enable the Central Government in public interest to exploit to the fullest extent possible zinc and lead deposits around Zawar area in the State of Rajasthan, and to utilize those minerals in such manner as to subserve the common good. In accordance with the provisions of the said Act, the Central Government formed this Company with its registered office at Udaipur in the state of Rajasthan, "to own, administer and manage the undertaking of the said Company". Before the formation of this Company the acquired concern was

managed by an Administrator appointed by the Government of India and the same was run as a Government Department from 22nd October, 1965 to 9th January, 1966. During the year 1965-66 there were three accounting periods i.e. from 1st April, 1965 to 22nd October, 1965 when the said concern was under the control and management of the Metal Corporation of India Limited; from 23rd October, 1965 to 9th January, 1966 when the undertaking was run by the Administrator appointed by the Central Government and from 10th January, 1966 to 31st March, 1966 when this Company (The Hindusthan Zinc Limited) was managing the undertaking. In Para 5 of its written statement, the Company has stated that no balance-sheet for the year 1965-66 could be prepared because of the three accounting periods stated above. The Company has in Para 5 of its written statement further stated, "the question, therefore, of revealing the true position of the Company for 1965-66 cannot and does not arise."

21. According to this Company, the Metal Corporation of India was unable to develop the mines and to complete construction of the Zinc Smelter for want of finance; that it was heavily indebted to the Industrial Finance Corporation of India, and to the Banks and private parties and had even failed and neglected to pay instalments of loans which had become due to payment. The said concern being in great finanicial difficulties was not even able to take delivery of the equipment which had already arrived from France and was lying in the Bombay Port; that the concern's financial condition were so acute that on a number of occasions it had failed to make timely payment of wages and salaries to its workers and the staff and that after taking over by the Government, wages and other dues payable to its workmen amounting to Rs. 8.3 lakhs were immediately paid by the Government and regular arrangements for such payment were also made. The Government had also arranged to take delivery of the imported mining equipment valued at about Rs. 8 lakhs which had been lying at the Bombay Port for about 2 years. The Contractors engaged by the said concern had also suspended work for non-payment of their bills and they were brought back into position by this management. Some foreign collaborators who had also suspended their work in India on account of inability of the said concern to pay their bills in time, "were also brought back into position" for completion of this work.

22. The Company is now a Government Undertaking and was incorporated under the Indian Companies Act on 10-1-1966 with its registered office at Udaipur. The entire equity capital is held by the President of India and his nominees and the Board of Directors of the Company is constituted by him. The business of the Company is subject to the Control of the Board of Directors and its accounts are audited by the Central Government on the advice of the Comptroller and Auditor General of India in addition to the proprietory audit by the Comptroller and auditor General himself. The Annual Report of the working of the company and its affairs along with its Audited Reports have to be placed before Parliament. There are no shareholders other than the President of India or his nominees, with the result that the dividends, if declared by the Company in future, will go to the coffers of the Company.

23. The Company in its written statement has stated that the full capacity of the Zawar Mines and the Zinc smelter plant will be achieved only in 1970-71. This was also the estimate of the union in its written statement. The Company has, however, added that this would be so provided circumstances are normal and nothing unexpected happens during that period. However, at the hearing, in his evidence Shri A. S. Bhandari, the financial adviser of the Company was inclined to state that the full capacity would be reached a few years after 1970-71. However, it is admitted by both sides that the Zawar Mines are being developed by the Government with a view to providing enough raw materials for the smelting plant when it commences full production, will make it no longer necessary to send the zinc concentrates to Japan for smelting. Apart from the saving in transport costs, the additional advantage will be that we will now be able to get cadmium, as a by-product, together with sulphuric acid. The capacity of the zinc smelting plant at Debari is 18,000 tonnes of zinc, and 25,000 (Sic 29,000) tonnes of sulphuric acid which will be used to produce 75,000 tonnes of superphosphate fertiliser, and 70 tonnes of cadmium, for which a necessary plant has already been constructed (See Hindi summary of Annual Report to Parliament for 1966-67). To feed the smelting plant, the Zawar Mines are being developed to produce 2,000 tonnes of ore per day, out of which 40,000 tonnes of zinc concentrates and 8,000 tonnes of lead concentrates will be produced. According to the Union, the production is minimum of 5,000 of lead concentrate and 10,000 tonnes of zinc concentrates.

24. At the Tundoo Factory, pig-lead of 91.9 per cent purity is being obtained. Silver in small quantity is also obtained as a by product. The present capacity of the Tundoo Factory is 54,000 tonnes, but in order to work the plant to full capacity, efforts are being made to import lead concentrates from foreign countries.

25. The Ministry's report to Parliament for 1966-67 from which the above abstracts are taken, states that the authorised capital of the Company is Rs. 10/- crores, out of which the Government of India by 31-3 1967 had invested Rs. 8·7 crores, of which Rs. 4.63 crores had been invested as part capital of Rs. 4.10 crores by way of loans. A sum of Rs. 6.91 crores out of this Rs. 8.74 crores has been spent by way of repayment of debts of the Company. The Company has annexed a chart to its written statement showing the financial position of the M.C.I. Limited for the period 1961-62 to 1964-65, which I think relevant, and therefore annex hereto as Annexure. 'A'

26. As I have stated earlier, there is no balance-sheet of the Company for the year 1965-66. The Company has stated that it has not been possible to prepare the balance sheet for that year, because there were as stated earlier, 3 accounting periods in that year, during which the Zawar Mines and the Smelter Plant were managed by different managements. It is difficult, in the absence of the balance sheet for the year 1965-66, to assess the working of the Company for the period subsequent to the takeover. Both parties have made general statements on the financial position of the Company and its future working till 1970-71, when expansion programme in the mines is expected to be over. As I have stated earlier, Shri Bhandari, the Financial Adviser of the Company, in his evidence has sought to extend that period, but it is admitted that even so the total value of the yearly turnover when the schemes and projects are completed will be about Rs. 9 crores. The Company makes monthly reports to the Ministry but these were not produced as protection for them was claimed on the ground that they contained confidential information with regard to other matters. However, the Zinc Smelter factory has now gone into production and I was told at the hearing before me on 11th April, 1968 that there is today a huge stock of unsold super phosphate fertilizers worth about Rs. 2 crores that has accumulated, that there is at present a depression in the demand for Zinc. The Company, however, expects to produce 80 tonnes of cadmium per year, of which the present market price was stated to be Rs. 65,000 per tonne.

27. In its written statement the Company has stated that after the expansion of the mines is completed by 1970-71, if everything turns out as expected, then it would be in a position to produce full requirements of zinc concentrates for the zinc smelter and that till that happens the smelting capacity of the zinc smelter may not be fully utilised; and the profit position of the Company after commissioning of the plant with full capacity sometime after 1970-71, cannot be precisely assessed at this stage. The Zinc plant has gone into partial production recently and I am quite aware that the Company is facing difficulties in working the smelter plant. It has difficulty of electric supply, which is almost a raw material in this industry and is a major component of the cost in the manufacture of electroplytic zinc. I am also aware that the Tiddi Dam at Zawar Mines which was to be constructed by the State Government at the cost of about Rs. 25 lakhs has now to be built by the Company at an estimated cost of about Rs. 40/- lakhs. I am also conscious that as a result of devaluation of the rupee, the company has become liable to pay substantially larger amounts on the outstanding payable to its French collaborators on account of deferred payment and interest. Whilst Shri Bhandari, has laid considerable emphasis on the adverse financial effect on the Company due to devaluation of the rupee, the Union has referred to the charged position after devaluation of the Pound Sterling. The Company has also stated that rock phosphate which is an essential raw material for the manufacture of super-phosphate at the zinc smelter and which is an imported commodity, will now cost the Company much more than before devaluation. The Company has stated that devaluation alone has increased the financial burden on the Company to the tune of Rs. 122.40 lakhs in repayment of instalments of loans and interest thereof. The Company has stated that this has imposed a recurring additional expenditure of about Rs. 50 lakhs per year on the import of rock phosphate, chemicals spare part, etc. as aforesaid. The Company has also pointed out that the international price of lead and zinc metals which was about Rs. 5000 per metric tonne in June 1966 has during the last year, going down to about Rs. 3100 in the case of lead and Rs. 3800 in the case of zinc (per metric tonne), inclusive of Rs. 500 excise duty. The Company apprehends that the profitability of the Company would be

adversely affected if this downward trend in the metal price persists. The Company in its written statement and at the hearing has also pleaded that when the schemes are completed the full operation is estimated as Rs. 9 crores, it will give an Investment turnover rate of 2:1, which would be adverse considering that the Investment turnover ratio of 1:1 is generally considered to be fair and reasonable.

28. The Union, on the other hand, has filed calculations in which it has sought to show that the Company has a bright future and that after the smelter plant goes into full operation in 1970-71, with the expected annual outturn of Rupees Nine Crores the Company should be able to earn handsome profits. The Union has stated that the Government had artificially control'ed the price of lead and zinc metals which had adversely affected the profit earnings capacity of the M.C.I. and had helped to reduce the cost of the construction of the smelting plant.

29. The management's learned advocate, Shri Patel, has urged the following five contentions against any revision in the existing wage scales and rates of dearness allowance in force, *viz.* (i) that the agreements of 8th April, 1960, 20th August, 1963 and 13th March, 1965 have not been terminated, and continue to be in force; (ii) that there has been no change in circumstance; (iii) that on the application of the industry-*cum*-region principle there would be no justification for paying any higher wages or dearness allowance to the workmen either of the Zawar Mines or of the Smelter Plant, that on the basis of that principle the wages paid at present are adequate; (iv) that the Company has no financial capacity to pay any higher wages; and (v) that classification is not under reference.

30. With regard to the first contention, it has to be noticed that the Company had not raised this point in its pleadings. It has admitted that the last two agreements of 20th August, 1963 and 13th March, 1965 were not settlements under the provisions of the Industrial Disputes Act, and therefore, no notice for their termination was necessary under section 19(2) of the Act. The agreement of 8th April, 1960 was reached in conciliation and itself provided that the minimum wage of the lowest category of the daily-rated monthly paid category, i.e. categories Nos. IV and V, would be subject to review after 31st March, 1963. The agreement also provided that the dearness allowance for the workmen covered by the settlement of 8th April, 1960 would also be subject to review after 31st March, 1963. In my opinion, the Union is right in its contention that the conduct of the parties subsequent to these three agreements has constituted their termination. It is on record that there was an agreement on 4th March, 1964, which was reached prior to the expiry of the agreement of 8th April, 1960 when a Committee was formed for revising existing wage-scales. This joint action of the parties would in my opinion amount to an intention on the part of both to terminate the agreement of 8th April, 1960. Even after 1964 there were negotiations between the parties and further negotiations appear to have taken place just prior to the arbitration agreement herein. The Union had, as early as on 28th April, 1966, written a letter to the Company demanding rationalisation of existing grades of pay and rates of dearness allowance, and had in the meantime demanded implementation of clause 4 of the agreement of 13th March, 1965. There was subsequently a joint meeting between the representatives of the Company and the Union on 12th May, 1966, when consideration of the rationalisation and revision of dearness allowance was postponed. With regard to dearness allowance, under item 3 the Committee was to go into the question of rise in points slab of dearness allowance, rate of neutralisation for higher pay scales and the period of revision; and the Union has contended that the agreement of 13th March, 1965 would have had little meaning till these points were decided upon by the Joint Committee to which they had been referred. There was no meeting of the Joint Committee held and thereafter discussions were held between the parties before the Conciliation Officer on 21st May, 1966 and, thereafter, on 8th June, 1966 it was agreed to grant an *ad-hoc* increase in dearness allowance of Rs. 10/-, Rs. 13/- and Rs. 16/- respectively for the three slabs of pay scales referred to earlier, and all other points were left to be decided later. The Union, thereafter, submitted a charter of demands dated 26th September 1966 which is annexure (D) to the written statement of the Union dated 18th June, 1967. Thereafter, by the memorandum of settlement dated 3/4th November, 1966, the parties agreed to refer the dispute to arbitration and the actual reference paper is dated 3rd May, 1967. These facts are in my opinion sufficient in constituting a termination of the three settlements on which the Company relies. The Supreme Court in the case of the Workmen of the Western India Match Manufacturing Co. and the Western India Match Manufacturing Co. Ltd. (1962, I LLJ, page 661), has held that though no formal notice under section 19(2) of the Act was given, in the circumstances of the case, the various representations made on behalf of the workmen and the presentation

of a charter of demands, were sufficient to terminate the settlement Hence, absence of a formal notice under section 19(2) of the Act terminating the settlement was held immaterial in view of subsequent representations made by the workmen and the other facts on record. In this case also I am more than satisfied that though no formal notice under section 19(2) of the Act was given in the circumstances of the case, the various representations made on behalf of the workmen and the submission of the charter of demands are sufficient to constitute termination of the three agreements or settlements referred to earlier. I therefore, reject the first contention of the Company.

31. The second contention urged by the Company is that there has been no change of circumstances to justify an alteration in the existing scales of pay and rates of dearness allowance. Shri Choudhary on the other hand has argued that there has been a considerable change in circumstances and he has for that purpose relied upon the observations of the Supreme Court in the case of Balmer Lawrie & Company (1964, I LLJ, page 280, at page 284) as to what constitutes change of circumstance There could be no doubt that a substantial rise in the price index number would amount to change in circumstance justifying the Tribunal into considering whether an alteration in the existing wage structure including rates of dearness allowance is called for. In the instant case there was no revision as such of the wage structure by the agreement of 8th April, 1960. Only minor adjustments were made and the ceiling of the then existing wage-scales were extended to keep the workmen contended during the period of the agreement. Prior to that most grades of pay had a span of only six to seven years, which was increased to fourteen years under the agreement of 8th April, 1960. In 1954 the pay scale for a grade I was Rs. 4.00—0.25—6.00 and under the Sukhadia award of 1954 the workmen were only granted a special personal pay of 37 paise i.e. 6 annas The increase granted amounted to 1½ times the amount of increment of 25 paise and the maximum of the scale was raised from Rs. 6.00 to Rs. 6.37. It appears that the employees employed before 1954 were getting free housing and the Sukhadia award on house rent allowance awarded that those workmen who were entitled to free housing should continue to get the same. This evidently led to discrimination and later those appointed before 1st April, 1954 were allowed increments equivalent to the amount of house rent payable by them. These increments were on the starting pay and the maximum pay of the scales of pay For instance when the pay scale was Rs 100- 10—200 under the Sukhadia award they got a personal pay of one increment House-rent payable to them was Rs. 6.00. Hence the grade became Rs. 116—10—216 There seems to be force in the Union's contention that since 1956 there has been such a rise in the cost of living index Number as to constitute a change in circumstance The All India Average Consumer Price Index Number was 105 in 1956; its average was 166 in 1965, and rose to 184 in 1966. The union has argued that as on 1st January, 1966 there had been a rise of 61 points in the index number and as on 30th June, 1967 the index number had risen to 209 points the rise has been of the order of 97 points

32. The Supreme Court in the case of Indian Oxygen Ltd. and Its Workmen and Others had held that it could not be contended that wage scales fixed in the year 1949 did not require revision in the year 1962 if was held in that case that even in the rise of the cost of living index number subsequent to 1957 a case has been made out for revising wage scales fixed in 1962 In this case there has been a phenomenal rise in the cost of living index number of 97 points from Index No 105 in 1965 to 202 in December 1966 Even taking the index figure of 126 of 1961, the rise in 1967 was as much as 76 points. I am quite conscious that the Company has paid dearness allowance during that period which had partly neutralised this rise in the cost of living but the rise has been so high and the period so long since the existing wage-scales and dearness allowance were fixed that it can well be held that there has been a change of circumstance justifying a claim for revision in the scale of pay There has also been a general increase in the wages of other mine workers in India, as stated elsewhere in this Award It must therefore be held that there has been change of circumstances. I therefore, reject the second point urged by the Company.

33. The third point urged by the Company is that on an application of the principal of industry-*cum*-region, the demand was not justified. The Company has in my opinion not been consistent with the industries with which it says it can be compared. It is the admitted position that there is no other zinc mine in Rajasthan nor is there one in any other part of the country. There is a smelter plant in Kerala State but there are no zinc mines in Kerala, where only processing work is being carried out. As I have pointed out earlier, the Company had first in Para 16 of its written statement dated 28th June, 1967 for the principle of region-*cum*-industry compared itself with the Khetri Mines which are in Rajasthan State. The union has objected to the comparison with the Khetri Mines because

those mines are still in a developing stage. Later the Company sought comparison with the mines of the N.C.D.C. which is also a public sector undertaking like Khetri Mines. At a later stage the Company sought to argue that it cannot be compared either with the Khetri Mines or the N.C.D.C. It has argued that there is no zinc mine in India and therefore the only proper basis of comparison should be with what the State Government in Rajasthan is paying to its employees. The company has pointed out that there was only one coal mine in Rajasthan, *viz.* the Pallana Coal mine, which has not been working for sometime now. It is difficult to accept the Company's contention that it cannot be compared with any mining industry, within or outside Rajasthan. The union has pressed very hard that the proper comparison should be with the wage scales that are being paid by the N.C.D.C. in its coalmines, and has relied upon the reference made by the Company in one of its written statements to the wages paid by the N.C.D.C. In my opinion applying the principles laid in the Supreme Court's decision in the case of French Motor Car Co. Ltd. and Greaves Cotton Ltd., the least that the Company can be asked to pay its lowest paid category of workmen is what the Khetri Mines are paying to its unskilled lowest paid workmen. And this for 3 reasons (1) The Khetri Project is a mining project (2) it is situated in Rajasthan and (3) It is a Government Undertaking of the National Mineral Development Corporation. In fact, if anything, the comparison would be in the favour of the Company because the Khetri Mines are still only in a developing stage. In fixing the minimum wage for the workmen of the Zawar Mines at the rates paid to the lowest paid unskilled workmen at the Khetri Project, I have borne in mind the financial burden that would be placed on the Company. If I were satisfied that the financial position of the Company was better I would have considered more favourably the demand for the same wages as those paid by the N.C.D.C. to its coal mining workers in terms of the recommendations made by the Central Wage Board for the Coal Mining Industry.

34. Both parties have in their submissions relied upon a number of decisions of the High Courts and of the Supreme Court many of which are clearly not applicable. The decision of the Supreme Court in the case of Hindustan Antibiotics Ltd. *versus* Their Workmen (1967 I LLJ, page 114) has been sought to be relied upon by both parties. But I cannot see how the management can derive support from this decision of the Supreme Court. If anything that decision favours the stand taken by the Labour Union, because the Supreme Court has in that case held that the same principles evolved by the industrial adjudication in regard to the private sector undertakings would govern those in the public sector undertakings having a distinct corporate existence.

35. With regard to the fourth contention urged by the learned Advocate for the Company that the Company has no financial capacity to pay any higher wages, I have earlier in this Award discussed the financial capacity of the Company, and I am of the opinion that the Company has the financial status and stability to meet the increase in wages and dearness allowance, which I am awarding under this Award. In fact the Company has given its officers drawing pay higher than Rs. 501/- increased dearness allowance of over Rs. 100/- per month and it is admitted, it has recruited staff in the Zinc Smelter on higher scales of pay and on Central Government rates of dearness allowance.

36. With regard to the fifth contention that classification is not under reference, I accept the contention of the Management that classification of individual workmen into the various existing grades is not contemplated by the existing demands 3 and 4, and I, therefore, uphold this contention of the Management.

37. In my opinion, this Company has financial stability and if it is experiencing financial difficulties at present, those are due to the development programme at the Zawar Mines and the inevitable expenses which the construction and putting into operation of the smelter plant has necessitated. I am of the opinion that the present financial difficulties of the Company cannot come in the way of the increases in the wages and dearness allowance which I am granting to the workmen under demands No. 3 and 4 under reference. They are in my opinion the minimum wages which a Government of India Undertaking of the size and the standing and the financial structure of this Company should grant. It must not be forgotten that the Zawar Mines are being worked since 1945. The wages which I am fixing for the lowest paid are not even fair wages. They do not at the present cost of living come anywhere near the need based wages as calculated by the various Wage Boards, such as the Iron & Steel Board and the Coal Wage Board. I do not accept the need based wage calculation of this Union, which shows an unrealistically high figure. The total minimum emoluments which I am awarding for the lowest paid worker at the Zinc Mines and the Head Office and the

Smelting Plant fall far short of the total emolument as recommended for the lowest paid mine workers in the coal, iron-ore and dolomite mines for mines of the size of these mines. Undoubtedly, the Union is right when it complains that the lowest paid workman both at the Zawar Mines, the Company's head-office as also at the Smelter Plant have in the past not got adequate wages nor are they getting adequate wages even today. After all, these workmen are mainly employed in mining operations, and mineworkers throughout the country, whether employed in coal mines, iron-ore mines or dolomite mines have recently had substantial increases granted to them by the recommendations of Wage Boards, which have been accepted by the Central Government. Compared to the wages granted to workmen in other mines of the size of this mine, the wages paid to the employees of the Zawar Mines today are lower than even what is paid to the lowest paid permanent workmen in the N.M.D.C. Copper Project at Khetri, which is still in the project stage, whilst the Zawar Mines have been worked for over 20 years. The Company in its written statement dated 28th June, 1967 has in para 15 clearly stated as follows:—

> "On the principle of industry-*cum*-region basis, the comparable concern may be N.M.D.C. Khetri project in Rajasthan which is also a Government of India undertaking having more investment than the Company. The wage structure of the Company is much better than the wage structure of the Khetri project, which will be seen from the comparative statement when produced."

38. Now, the Union examined Shri G. R. B. Bhargada, who is a Senior Surveyor in the Khetri Project, and who is the Vice-President of the Rashtriaya Khetri Tamba Project Mazdoor Sangh, and he has given particulars of the wages paid to the lowest paid sweeper (Class IV employee) in the Khetri Project. As on 1st January 1967, at Cost of Living Index No. 205, the total emoluments of the lowest paid permanent workmen of the Khetri Project are:—

Basic Pay	Rs. 70·00
Dearness Allowance	Rs. 65·00
Local Allowance	Rs. 8·75
Total	Rs. 143·75

It is necessary to explain that the local allowance is paid at 12½ percent. on basic pay below Rs. 100.00, at 10 percent. on basic pay between Rs. 101.00 and Rs. 300.00, and on basic pay between Rs. 301.00 and Rs. 500.00 the rate is 10 percent. of basic pay subject to a minimum of Rs. 31.25 and maximum of Rs. 42.50, as shown in the relevant circular filed by the Union's witness (E.W. 1). The Company, has, in my opinion, wrongly sought to compare the wages paid to the casual daily rated employees employed at the Khetri Project, with the wages paid to the permanent employees in the Zawar Mines. The proper comparison should, I think, be on the basis of what the permanent workmen in the Khetri Project are paid. After all, the Zawar Mines has been existing for over 20 years now, and its workmen have been enjoying the benefits of incremental scales of pay for some time now, and it is not fair, I think, to try and compare the wages of the casual daily-rated constructional workmen in the Khetri Project with the wages of the employees in the Zawar Mines and the Smelter plant. In fact, the casual daily-rated constructional workmen both at the Zawar Mines and the Smelter plant have been specifically omitted by the terms of the agreement referring this dispute to arbitration.

39. On the question of minimum wage for the lowest paid unskilled workmen, the following tables indicate what this Company and the other units, with which comparison was sought at the hearing, are paying at present.

The Zawar Mines at All India Consumer Price Index No. 215 (1949=100) *pays* :—

Rs. 59·02	Basic pay
70·40	Dearness allowance including the increase in dearness allowance of Rs. 12·00 granted by my Second Interim Award with effect from 1-9-1967 and that granted from 1-1-1968 on average Index No. 215.
4·00	Interim relief granted by my Award Part I with effect from 1-7-1967.
133·42	Total

The Khetri Project at Khetri in Rajasthan with effect from 1-11-1967 *at Index No.* 205 *pays* :—

Rs. 70·00	Basic pay
65·00	Dearness allowance from 1-11-1967 at Index No. 205.
8·75	Local allowance
143·75	Total

40. At the hearing at Bombay before me on 11th April 1968 Shri B. Choudhry the General Secretary of the Zawar Mines Mazdoor Sangh stated that he had in his capacity as Secretary of the Union representing the workmen at the Khetri Project entered into an agreement with the Management of the Khetri Project by which it was agreed that for every point's rise above the All India Average Consumer Price Index Number for the Working Class (1949—100) over Number 177 (which was the average for the six months ended June 1966) the workmen of the Khetri Project would be paid dearness allowance at the rate of 60 paise per point's rise for workmen on wage up to Rs. 4.49 per day and at the rate of 78 paise per point for those on a wage of and above Rs. 4.50 per day. This rate is applicable only to the D.R.M.P. workmen of the Khetri Project and not its monthly rated employees.

The Central Government pays its employees at Udaipur.

Rs. 70·00	Basic Pay
65·00	Dearness allowance at Index No. 205 with effect from 1-11-1967.
7·50	House Rent Allowance
142·50	Total

The National Coal Development Corporation—a Government of India Undertaking—at Index No. 202 *pays* :—

Rs. 130·00	Basic pay at Rs. 5·00 per day.
28·08	Dearness allowance at all India Index No. 202 @ 3 paise per day per point's rise above Index No. 166.
Rs. 158·08	Total of Basic and D.A. at Index No. 202.
13.00	Attendance allowance at 10% of basic pay subject to conditions of attendance prescribed by the Coal Mines Bonus Scheme.
Rs. 171·08	Total

On Index No. 215 (average for the 6 months July to December 1967) the Dearness allowance would be increased by (13 points × 3 paise per point) 39 paise per day or Rs. 10.14 per month, raising the minimum wage of the Coal Miner of the N.C.D.C. at Index No. 215 to Rs. 181.22 per month.

41. It would thus be seen that today the lowest paid permanent unskilled surface worker in the Zawar Mines is the lowest paid employee when compared to what the lowest paid employee gets in the Khetri Project, the coal miner of the N.C.D.C. or what the Central Government pays its lowest paid employee at Udaipur. I am aware that the Company's Zawar Mines are several miles from Udaipur City and that its Smelting project is also outside the limits of Udaipur City proper. As I have stated earlier, it is now well recognised principle laid down by several decisions of the Supreme Court that when considering the revision of a wage-structure what is to be taken into account is the totality of remuneration paid of which basic pay and dearness allowance are the two main components. As shown above, the lowest paid surface workmen at Zawar Mines get at present total emoluments of Rs. 133.42 at All India Index No. 215. The Union has urged that the wages made up of basic pay and dearness allowance of the lowest paid worker in the Zawar Mines should be brought upto what the lowest paid surface worker in the N.C.D.C. is paid. There is much substance, in principle, in that contention. However, as indicated above, the lowest paid surface worker in the

N.C.D.C. coal mines stands to get a total emolument made up of basic pay, dearness allowance and attendance allowance of Rs. 181.22 at Index No. 215. If the minimum wage for the lowest paid surface worker in the Zawar Mines is to be brought up to that level it would mean granting at Index No. 215 an increase of nearly Rs. 47.80 per month in the total emoluments over what I have already granted by way of interim reliefs. Such an increase, in my opinion, cannot be granted, as it would put too heavy a burden on the Company. Even if only the basic wage plus dearness allowance paid by the N.C.D.C. is taken into account the further increase—increase over what I have provided by my Awards Part I and II herein—would have to be of the order of about Rs 34.80 more per month which too would be a heavy burden on the Company's finances, considering the other consequential benefits of adjustment etc which I am granting.

42. It must, however, be borne in mind that the workmen in the Zawar Mines are also entitled to attendance allowance of 0.25 paise per day for underground workers and 0.12 paise per day for surface workers, conditional upon their putting in attendance of 22 days in a month. I have also considered the statement 'F' annexed to the Company's written statement dated 28th June 1967. It contains monetary values of certain service benefits granted to the workmen such as provident fund gratuity, leave, medical benefits, electricity, water-subsidy house-rent allowance, furniture allowance and educational expenditure. The House-rent allowance of Rs. 2 50 per month is paid (a) to those drawing basic pay upto Rs. 100/- per month and (b) coming from outside the Colony at Zawar Mines. However, some allowance must be made for and some monetary value assigned to the fringe benefits, other than those of Provident Fund and Gratuity which are retiral benefits and leave benefits. I would compute the monetary value of these fringe benefits in the case of workmen of the Zawar Mines at about Rs. 6/- per month. It must at the same time also be borne in mind that the workmen in the Zawar Mines, particularly the underground miner, is subject to sillicosis. The incidence of that disease is quite high as is proved by the report on "The Silicosis, Hazard in a Lead and Zinc Mine in Rajasthan" published by the office of the Chief Adviser, Factories, 1961.

43. Taking all the facts and circumstances into consideration, on an overall assessment, I think the practical thing to do would be to grant an addition of Rs. 10.00 in the existing total emoluments by way of basic pay and dearness allowance of the Zawar Mine Employees. This is the least that the Company can be asked to pay. This would bring up the total emoluments of the lowest paid unskilled surface worker, at Zawar Mines, which at present, i.e. on Index No. 215 is Rs. 133.42, as shown in the table above, to Rs. 143..42 per month.

44. Demand No. 3 in respect of dearness allowance is in two parts: the first part is whether the demand of the Sangh for payment of dearness allowance according to the Central Government rates and then its linking with the Consumer Price Index is justified, and secondly, if not, to what relief are these workmen entitled.

45. With regard to the first part of demand No. 3, the Central Government's employees at Index No. 205 are entitled to rates of dearness allowance, as shown below:—

Basic Pay	D.A. at Index No. 205
Below Rs. 110·00	Rs. 65·00
Rs. 110·00 and above but below Rs. 150·00	Rs. 91·00
Rs. 150·00 and above but below Rs. 210·00	Rs. 114·00
Rs. 210·00 and avove but below Rs. 400.	Rs. 137·00
Rs. 400·00 and above but below Rs. 450	Rs. 150·00

The Company is paying dearness allowance to its employees as shown below :—

Basic Pay	Rate of d.a.	D.A. at Index No. 202	D.A. at Index No. 215 from 1-1-1968
Upto Rs. 120·00 (or Rs. 4·61 daily wage)	60 paise per points' rise	Rs. 62·60	Rs. 70·40
Rs. 121·00 to Rs. 230·00 (Rs. 4·62 to Rs. 8·84)	78 paise per point's rise	Rs. 74·18	Rs. 84·32
Rs. 231·00 to Rs. 520·00 (Rs. 8·85 and above)	96 paise per points' rise	Rs. 85·76	Rs. 98·24

This is inclusive of the increase in dearness allowance granted by my Interim Award Part II, which increase I direct should be treated as additions to the dearness allowance. The Company is in addition paying Rs. 4.00 per month as Interim Relief to all its employees, under my Interim Award Part I as stated above, and I am directing this to be added to the existing basic wages.

46. The question under part one of the demand No. 3 as worded is whether the demand of the Sangh for payment of dearness allowance according to the Central Government's rates of pay is justified. The Union had at the hearing argued for payment of dearness allowance at Central Government rates at an earlier index number than No. 202 and wanted linkage thereafter with the Rajasthan indices of Jaipur and Bewar. Thereafter, that claim of linkage with the Rajasthan indices was abandoned, and wisely too, because, as I have shown, the existing linkage with the All India Average Consumer Price Index Number for the Working Class Base (1949=100).

47. I do not think it is possible under the first part of demand No. 3 to grant the employees of the Zawar Mines the Central Government rates of dearness allowance, considering the financial burden it would put on the Company. The workmen are, however, entitled to an increase in their existing dearness allowance. With regard to the second part of demand No. 3, the existing scheme of dearness allowance links the dearness allowance to be paid with a rise of each point's in the Average All India Consumer Index Price No. (1949=100). The rates of linkage are 60 paise, 78 paise and 96 paise per point's rise of the All India Index No. on an average of six months, as shown in the tables reproduced above.

48. I am aware that the lowest rate of 60 paise per point does not provide neutralisation at 90 percent, and I would have been inclined to improve it. But taking into consideration all the facts and circumstances of the case, and bearing in mind that by a recent agreement the Khetri Project Workers' Union has for its D.R.M.P. agreed to the rate of neutralisation at the rate of 60 paise and 78 paise per point's rise, which is the same rate as for the first two slabs of Basic Pay as in the Company, I hesitate to revise those two rates, or the third rate for the third slab, which of course is higher. In doing so, I have borne in mind the burden which would be placed on the Company if an upward revision were to be granted.

49. Therefore on demand No. 3, whilst granting an increase in the quantum of dearness allowance as indicated hereafter, I retain the existing rates of neutralisation, which in fact are linked to the Central Government Average Consumer Price Index No. 1949=100).

50. As regards demand No. 4, whether the existing grades of pay of the workmen of the Zawar Mines and the Head Office of the Hindusthan Zinc Limited need revision. I am of the opinion that the demand is justified. As I have shown from the table cited earlier, the basic pay of the lowest paid workman of Rs 59.02 is lower than the basic pay of the lowest paid workman in Central Government service and in the Khetri Project. That basic pay needs to be brought up to near Rs. 70.00 per month.

51. Undoubtedly, the scales of basic pay in Zawar Mines for its daily-rated-monthly-paid (D.R.M.P.) are low. I give below the existing five grades for the D.R.M.P. workmen with their conversion into monthly rated scales. This has been shown by the Union in annexure 'H' to its written statement of claim dated 18th June, 1967, and for the purpose of understanding the directions which I shall be giving hereafter, it is necessary to reproduce here the existing daily-rated scales of pay for the D.R.M.P. workmen and the monthly scales of pay for the monthly-rated-monthly-paid. The same is reproduced on the next page as para 51A.

Existing Grade (Basic)

For Daily rated Monthly paid categories.

	Daily rate	Daily rate converted into monthly rate.
Grade V (Unskilled)	2.27—12.cc—3.11—12—3.37	59.02—3.12—78.8c—3.38—87.62
Grade IV (Semi skilled)	2.42—15—2.87—20—4.67	62.92—3.90—74.62—5.20—121.42
Grade III (Jr. Skilled)	3.27—20—5.27	85.02—5.20—137.02
Grade II (Skilled)	3.77—25—6.27	98.02—6.50—163.02
Grade I (Highly Skilled)	5.27—25—8.77	137.02—6.50—228.02
Special Grade (Driller-*cum*-Blaster)	5.77—40—9.77—50—10.77	150.02—10.40—254.02—13.00—280.02

For Monthly rated Monthly paid categories

Grade I	270—15—330—17.50—400—20—420—EB—20—520
Categories	Assistant, Assistant Medical Officer, Office Superintendent, Chief Time Keeper, Mines Foreman, Senior Chargeman (Power House), Store Keeper.
	NOTE : Senior Chargeman (Power House). The Company may abolish this post in future.
Grade II	245—15—335—17.50—475.
Grade III	230—15—410—17.50—445.
Categories	Assistant Accountants, Departmental Mechanical Foreman.
	NOTE: Junior Mechanical Foreman (Mines) shall be designated as Mechanical Foreman (Mines).
Grade IV	210—15—420
Categories	Chemist, Cashier, Assistant Chief Time Keeper, Assistant Store Keepers, Senior Stenographer, Chargeman (Electrical).
Grade V	Rs. 190—12.50—265—15—385.
Categories	Assistant Mechanical Foreman, Power House Shift-in-charge.
Grade VI	175—12.50—325—15—355.
Categories	Underground Supervisor, Mechanic, Senior Clerks (Selection Grade).
Grade VII	155—10—175—12.50—325.
Categories	Sub-Overseers, Senior Compressor Operators.
Grade VIII	140—10—220—12.50—295.
Categories	Office Assistants, Stores Assistants, Accounts Assistants Junior Chargemen (Power House), Assistant Mechanics, General Mistries, Turner-*cum*-Welder, Laboratory Assistants, Crushing Supervisors, Samplers, Compressor Operators (Underground Supervisors), Diamond Drill Operators Electrician, Survey Assistant, Departmental Assistants, Record Keeper-*cum* Typist, Mechanical Chargeman (Mine). Welfare Assistant, Canteen-in-Charge, Purchase Assistant.
Grade IX	125—10—235—EB—10—265.
Categories	Sharpener Mistry, Drivers, Nurse-*cum*-Midwife
Grade X	110—7.50—170—10—230.
Categories	Time Keepers, Junior Clerks,(Departmental Clerks and Magazine Clerks), Despatcher, Compounder, Typist, Nurse, Canteen Supervisors, Surface Supervisors, (Mines, Mill, Civil, Engineers etc.).

Grade XI . . . . . 100—5—170
Category . . . . . Watch & Ward Supervisors.

NOTE : All workmen working underground whether DRMP or MRMP are entitled to a additional salary equivalent to 10 per cent of Basic Pay.

52. Before dealing with the question of revision of wage and pay scales, it is necessary to give a breakup of the existing employees at the Zawar Mines. There are about 1500 workmen employed in the Zawar Mines and at present about 959 at the Smelter Plant, of whom 170 in the Zawar Mines and about 205 in the Smelter plant are temporary/casual workers, who under the terms of reference to arbitration are excluded from this reference, and in my awards Part I and Part II, I have excluded them from the benefits of those awards, and the casual workmen in the Zawar Mines shall also be excluded from the benefit of this award Part III. It is admitted that no underground worker is a temporary employee. The wage-group-wise breakup of the workmen in the Zawar Mines is as follows :—

Wage-group	Zawar Mines
Below Rs. 120·00 . . .	800
Rs. 121·00 to Rs. 230·00 . . .	443
Rs. 231·00 to Rs. 520·00 . . .	80
	1323

It will be seen that almost 50% out of the 1323 workmen in Zawar Mines as shown above fall in grade IV which consists of Helpers, Trammeres-Muckers, Office-boys and Ward-boys and 121 fall in Grade V. Therefore, the majority of the workmen of the Zawar Mines are unskilled workmen.

53. The wage structure as demanded by the Union has been stated in Annexure I to its written statement dated 18th June, 1967. The Union has demanded 13 monthly-rated scales of pay, Grade A to Grade M, to fit in all categories except the clerical staff. For Grade M which is the lowest, for the surface unskilled worker, the Union wants the pay-scale of Rs. 110-3.00-125-4.00-145, and for the next higher grade, Grade L, which is meant for underground unskilled trammers-muckers, the Grade of Rs. 120-4.00-140-5.00-165 is claimed and so on till for Grade G for the highly skilled category (special cadre) the Union claims the pay-scale of Rs. 230-10-280-13-410. The highest grade is Grade A with the scale Rs. 460-25-660-30-810. In addition, the Union has claimed 10% as attendance bonus and 15% as underground allowance. But neither of these demands have been referred to arbitration under the terms of reference to me, and I have no jurisdiction to decide either of these claims under demands Nos. 3 and 4 under reference. The Union has pointed out that these are basic scales of pay, which would attract separate dearness allowance, and that the various employees would have to be fixed in this wage structure on the basis of responsibility attached to the post, workload, qualifications and experience necessary etc. after removing the present anomalies and discrepancies in the classification. It is also claimed that all other existing benefits should remain in force. For the clerical staff, in which it has included Gate-Checkers, Bundy Checkers, Watch and Ward Supervisors, Cook etc. the Union has claimed six monthly scales of pay, the lowest of which, (Grade VI), being Rs. 140-7.00-210-10.00-260. The lowest clerical grade is Grade IV, for which the Union has claimed the wage-scale of Rs. 180-12.00-200-15.00-375, and for Grade I, the highest clerical grade, it has claimed the scale of Rs. 400-20.00-500-20.00-750. It has also claimed for the clerks 10% attendance and bonus allowance and other conditions which it has claimed as stated above for the non-clerical Grades A to M. The Union in my opinion has not made out any justifiable case for such a radical upward change in the existing wage structure in the Zawar Mines. In annexure 'J' to its written statement, the Union has pointed out discrepancies and anomalies in the existing classification. The Union has stated that the list is illustrative and that there are many more instances of discrepancies and anomalies in respect of other existing categories. In my opinion, beyond improving the start of each existing scale of pay and raising the maximum, which I am doing, by three existing annual increments, I am not satisfied that a case has been made out for disturbing the existing wage-structure. I am therefore not entering into the question of discrepancies and anomalies in the existing classification. On these alleged

discrepancies and anomalies, no satisfactory evidence as to the allegation that the existing duties are higher than the designation of the workmen, has been led before me. During my inspection of the Zawar Mines, reference was made to such instances, but there has not been enough material placed before me to justify my giving any directions with regard to reclassification. I am of course not referring to demand No. 8 which is on a different footing, and is in respect of individual cases.

54. I may pause here and state that it is an admitted fact that this Company has been paying its Officers employed in all its units, dearness allowance at the rates in force in the Central Government offices. It is admitted that by Order dated 10th April 1967 employees drawing salary above Rs. 520.00 but upto Rs. 1000.00 per month were granted dearness allowance of Rs. 120.00 per month and those above basic pay of Rs. 1000.00 were granted dearness allowance at the rate of Rs. 100.00 per month. This rate of dearness allowance was made effective from 1st March, 1967. It is admitted that these rates are the rates at which dearness allowance is paid to employees and officers in the service of the Central Government in those salary groups. This rate of dearness allowance is paid to about 51 or 52 employees in all the different units of the Company, of whom about 30 are in the Zawar Mines, 10 at the Zinc Smelter, 4 or 5 at Tundoo, 4 at Calcutta office of the Company, and 3 at its Head Office at Udaipur. There is also evidence that in the past on occasions the Company had recruited employees in some of its units at the Central Government scales of pay and dearness allowance. The Union relies upon these facts for two purposes (1) that this fact proves that the Company itself has considered the Central Government rates of dearness allowance as reasonable and (2) when it was felt that certain increase in dearness allowance was justified, the financial difficulties which the Company has pleaded against the grant of any increased dearness allowance to its workmen did not come in the way of the Company doing justice to its higher paid workmen and officers.

55. After an anxious consideration of the submissions both oral and written made by the representatives of both parties and the various statements and charts filed by them and the authorities on which they have relied, I direct that the amount of Rs. 4.00 as interim relief granted by my award Part I herein and which is being paid as a separate payment each month should be added to the basic pay, and the same will thereafter cease as a separate payment, having become merged in the basic pay. I further direct that out of the increase of Rs. 10.00 which I am awarding herein for the workmen in the lowest pay slab, Rs. 7.00 be added to the basic pay as on 1-1-1968 and Rs. 3·00 be added to the dearness allowance as from 1-1-1968 on Index Number 215. This would mean that the lowest unskilled worker in the Zawar Mines on basic pay of Rs. 59·02 per month would get a basic pay of Rs. 70.02 (Rs. 59.02 + Rs. 4.00 Interim Relief under Award Part I + Rs. 7.00 under this Award Part III) and dearness allowance of Rs. 73.40 giving him a total remuneration of Rs. 143.42 with effect from 1-1-1968 at the All India Average Consumer Price Index Number 215 (1949 100). For those in pay slab of Rs. 121 to Rs. 230 and Rs. 231 to Rs. 520 in their case also the Interim Relief of Rs. 4.00 per month awarded by Award Part I herein will be added to their Basic Pay and they will get a further increase in their existing basic pay as from 1st January, 1968, of Rs. 7:00 per month. Thereafter, the payment of Rs. 4·00 Interim Relief under Award Part I will cease as a separate payment, having become merged in the basic pay. With regard to those in the basic pay slab of Rs. 121 to Rs. 320, they shall get an increase in dearness allowance of Rs. 3.90 and those in the pay slab of Rs. 320 to Rs. 580 shall get an increase of Rs. 4·80 per month. The table below illustrates my directions as given about in respect of the lowest paid category V D.R.M.P. workmen at the Zawar Mines:—

	Basic Pay	D.A. at Index No. 215	Interim Relief	Total at Index No. 215
Existing . ..	Rs. 59·02+	Rs. 70·40	+Rs. 4·00—	=Rs. 133·42
Awarded .	Rs. 70·02+	Rs. 73·40	+Nil— (merged in basic pay)	=Rs. 143·42

56. As I have stated earlier, the daily rated workmen in the Zawar Mines are divided into five grades. Since I am fixing the minimum basic wage of the lowest unskilled worker at Rs. 70·02 per month the start of Grade V will have to be

raised from Rs. 2·27 to Rs. 2.70 per day after providing for rounding off. I am maintaining the existing differential at the start for the remaining four higher grades. I am retaining the existing rates of increments in each of the five existing grades of pay for the D.R.M.P. as the same are quite fair and reasonable, but am extending the span of wages for each of these five categories by three years. I am doing this for two reasons (a) the existing wages were revised 8 years ago and (b) there are a number of workmen who have been in the service of this Company for a long period and would be nearing their maximum in their respective existing grades of pay. Even otherwise an increase in the existing maxima of the various wage scales is justified. I, therefore, revise the existing grades of pay of the D.R.M.P. as follows:—

	Rs.				
Grade V .	2·70	0·12	3·54	0·13	4·19
Grade IV . .	2·85	0·15	3·30	0·20	5·70
Grade III . . .	3·70	0·20	6·30		
Grade II . . .	4·20	0·25	7·45		
Grade I . . .	5·70	0725	9·95		
Special Grade	6·20	0·40	10·20	0·50	2 70

57. With regard to the existing system of payment of dearness allowance, in my opinion, the rate of 60 paise per point though it provides a neutralisation of only about 73% for the lowest paid worker, must be retained. The existing system of dearness allowance has its advantages over other schemes and has been in existence for some years now. Besides at Khetri under the recent agreement referred to earlier this rate has been accepted as adequate for those in the lowest group. The rate of neutralisation of 78 paise and 96 paise per point's rise for the second and third pay groups is fair and is better for certain categories of workmen than that provided by the Coal Wage Board. Taking into consideration all the facts and circumstances of the case I do not think any increase in the existing rates of neutralisation is called for. However, the dearness allowance payable to the workmen falling in the three wage groups will have to be increased for each slab with effect from 1st January, 1968 as shown below, and I award accordingly:

Basic Pay	Quantum of dearness allowance at Index No. 215 with effect from 1-1-1968.
Upto Rs. 120·00 . . .	Rs. 73·40 per month.
Rs. 121·00 to Rs. 230·00 . . .	Rs. 88·22 per month.
From Rs. 231·00 to Rs. 520·00 .	Rs. 103·04 per month.

58. With regard to M.R.M.P. workers, it cannot be denied that the increments provided in their existing pay scales are fairly liberal. The Union has complained that there is no proper classification and has in its statement's Annexure 'J' pointed out discrepancies and anomalies which according to it exist in the existing classification. It has stated that this list is illustrative and that there are many more such discrepancies and anomalies. I am not going into the question of classification because that is not one of the terms of reference to me. As regards monthly-rated workers, I do not think it would be practical to disturb their existing wage structure, which was evolved in 1960 and which has endured for the last eight years. However, at the hearing, instances were pointed out of workmen who have reached or are near the maximum of the existing 11 monthly scales of pay. I hold that they should be entitled to an increase of Rs. 10·00 over their total emoluments as on 1st January, 1968 at Index Number 215. What should happen in their case also is that Rs. 4·00 being paid as Interim Relief under my Award Part I should with effect from 1st January, 1968 be added to their basic pay and a further sum of Rs. 7·00 should be added to their basic pay as on 1st January, 1968, and the enhanced basic pay should be adjusted in their respective pay scales as directed hereafter. With regard to dearness allowance, under my

directions herein they shall get the following dearness allowance as from 1st January, 1968 at Index Number 215 at the following rates:—

Upto basic Pay Rs.	120/-	Rs. 73·40
Basic Pay from Rs.	121/- to Rs. 320/-	Rs. 88·20
Basic Pay from Rs.	321/- to Rs. 520/-	Rs. 103·04

They shall thereafter get dearness allowance at the existing rates for subsequent changes in Index Number. With regard to the maximum of their scales, I think the maximum should be enhanced by 3 increments. I am quite aware that with the addition of the Rs. 11.00 (Rs. 4.00 Interim Relief under Award Part I—Rs. 7.00 awarded herein) to their existing basic wage will not be a step in the grade. Therefore, each employee's total basic pay after addition of Rs. 11.00 if it does not amount to a step in the existing grade as stated above it will be stepped up to the next higher step in the grade, and for those who are on the maximum of the existing scale, the increase will be in additional increments awarded herein, with necessary adjustments in the next higher step in the enhanced grade. It will be noticed that I am not granting any increments in the adjusted scales of pay based on length of service. The Union has claimed point to point adjustment, which is impossible to grant. Therefore, the revised grades of the M.R.M.P. workmen will be as follows:—

	Rs.
Grade I	270—15—330—17.50—400—20—420—EB—20—580
Grade II	245—15—335—17·50—527·50
Grade III	Rs.—230—15—410—17·50—497·50
Grade IV	210—15—465
Grade V	190—12·50—265—15—430
Grade VI	175—12·50—325—15—400
Grade VII	155—10—175—12·50—332·50
Grade VIII	140—10—220—12·50—332·50
Grade IX	125—10—235—EB—10—295
Grade X	110—7·50—170—10—295
Grade XI	100—5—185

I further direct that the arrears due to the workmen under my Award herein will be paid to them within two months from the date of the publication of this Award in the Official Gazette. The Company shall be entitled to the credit for the amount of Interm Relef payments made wherever so necessary in implementation of the Award. For instance, wherever the Interim Relief payment of Rs. 4·00 under Award Part I has been made an additional payment of Rs. 4·00 in Basic wage will not be made from 1-1-1968, but the same will be adjusted.

59. I must repeat the directions of my earlier awards with regard to the casual workers. The 170 casual/temporary workers in the Zawar Mines will not be entitled to the benefits under this Award, as by the terms of reference they have been excluded from the same.

60. The directions given above shall also apply to the Head-office staff and in their case also those on higher scales of pay and or rates of dearness allowance will continue to get the zenefits of the same.

61. The Union has demanded retrospective effect to the increase in basic wage and dearness allowance with effect from 1st January, 1966. It is impossible to accede to such a demand, considering the financial position of the Company. I have given retrospective effect to the payments under my Award Part I and II. Increase in dearness allowance under my Award Part II was granted with effect from 1st September, 1967, and the increase I am awarding now can only be granted with effect from 1st January, 1968.

62. It is further necessary to direct that all those who are getting better scales of pay and or dearness allowance at the Zawar Mines or the Head Office of the Company will continue to get the same.

63. *Demand No.* 1: *Bonus.*—The demand for bonus is whether the demand of the Zawar Mines Mazdoor Sangh for the payment of bonus to the workmen of

Zawar Mines as per the long term agreement of 8th April, 1960 is justified? If not, to what relief are the workmen entitled?

64. As I have stated earlier, Annexure 'C' to the said agreement dated 8th April, 1960 provided bonus to be paid at ad-hoc rates for each of the years 1959-1960 to 1965-1966. For the years 1964-65 and 1965-66 the rates provided were 1/6th and 9/48th respectively of the basic wages and salaries earned by the workmen during the said two respective financial years. There were certain clarifications made under agreement of 8th June, 1960. For the financial year 1964-65 the Central Government paid bonus to the workmen of the Zawar Mines at the agreed rate of 1/6th of their basic wage or salary after the Mines were taken over. This was paid on 4th November, 1965 after the Payment of Bonus Act came into force in May 1965.

65. The demand now is for payment of bonus for 1965-66 under the terms of the original agreement of 8th April, 1960 read with the agreement of 8th June, 1960. Now, at the hearing a suggestion was made by me for settlement of this demand for bonus for 1965-66 and the admitted position as stated by Shri A. S. Bhandari, the Financial Adviser of the Company at the hearing and as recorded is that if the Metal Corporation of India Ltd., Calcutta, accepts its liability for payment of bonus for 1965-66 at the agreed rate under the agreement dated 8th April, 1960 for the period from 1st April, 1965 to 22nd October, 1965, during which period that Company was in charge of the Zawar Mines, the Hindustan Zinc Ltd., would pay bonus at the same rate for the remaining period from 22nd October, 1965 to 31st March, 1966. He has further stated and it is recorded that this would be done provided that the Hindustan Zinc Ltd., would not then be required to pay bonus for the period from 10th January, 1966 to 31st March, 1966 under the provisions of the Payment of Bonus Act and this latter position was conceded by the Union

66. Thereafter a letter from the Metal Corporation of India Ltd., (hereinafter for brevity's sake referred to as M.C.I.) dated 22nd May, 1967 signed on its behalf by Shri A. C Dutta, one of its Directors and addressed to the Hindustan Zinc Ltd's, office at Calcutta was delivered at its office in Calcutta and which on onward transmission was received by the Hindustan Zinc Ltd., office at Udaipur on 30th May, 1967 I enclose herewith a copy of that letter. In paragraph 8 of that letter Shri A. C Dutta in admitting the liability of the M.C.I. for bonus for 1965-66 stated as follows:—

> "As such the company is liable for payment of ad hoc bonus to its the then workmen as per the above agreement upto 22nd October, 1965 (the date on which the undertaking of the company was acquired by the Government) although the agreements continue to have effect upto 31st March, 1966."

Now, to this letter of the M.C.I. Ltd., the Hindustan Zinc Ltd., replied by its letter dated 7th June, 1967 a copy of which also I enclose as Annexure 'B'. In that letter its Financial Adviser Shri A. S. Bhandari, inter alia observed and stated as follows:—

> "It has been stated in para 8 of the said letter that the company is liable for payment of ad hoc bonus to its the then workmen as per the agreement upto 22nd October, 1965. It is not quite clear from the said letter whether the M.C.I. Ltd., admits its liability to pay bonus to the workmen upto 22nd October, 1965 under the long term agreement dated 8th April, 1960 read with the agreement dated 8th June, 1960 or only an opinion has been expressed about the liability of the company for payment of ad hoc bonus."

Further after pointing out that the amount of bonus payable under the agreement upto 22nd October, 1965 and covering the workmen at Zawar Mines, Tundoo Smelter and Calcutta Office would roughly work out to Rs. 2.50 lakhs, Shri Bhandari stated and observed as follows:—

> "We shall be grateful if you kindly let us know at you earliest whether M.C.I. Ltd., accepts the liability for the above amount on account of ad hoc bonus for the period 1st April, 1965 to 22nd October, 1965. In case the liability is accepted by you the payment of ad hoc bonus would be made to the workmen for the above period on your behalf and account the same provided in the books of accounts of M.C.I. Ltd., as on 22nd October, 1965. We would also like to have along with the above confirmation a certified copy of the Resolution of the Board of Directors of M.C.I. Ltd., admitting the liability. In case your Board has delegated the powers in this behalf to any of its individual director or officer the letter accepting the liability for payment of ad hoc bonus

may please be signed by that Director or officer and a certified copy of the power of attorney given to him by the Board may also please be sent to us."

Shri Bhandari later observed in the letter that this request for information was being made for safeguarding the interest of Hindustan Zinc Ltd., and for ensuring that no dispute would arise in future with M.C.I. Ltd., in this matter. In the last paragraph of the letter Shri Bhandari also stated that the dispute regarding bonus for 1965 was pending before the Arbitrator and that the workmen had been claiming bonus under the long term agreement of 8th April, 1960 whereas the management's stand was that the Payment of Bonus Act had superseded the long term agreement in so far as the bonus claim were concerned. Copy of this letter was also endorsed by Shri A. S. Bhandari to Shri P. M. Ismail, I.C.S. (Retd) Commercial Director, Indian Steel and Wire Products Ltd., P.O. Indranagar, Jamshedpur with a copy of the letter from the M.C.I. Ltd., dated 23rd May, 1967 and he was requested to enlinghten whether the signatory to the M.C.I. Ltd.'s said letter was competent to bind the company for payment of bonus to the workmen of the Zawar Mines etc., for the period April 1965 to 22rd October, 1965. He further went on to add that in case it was so the resolution of the Board of M C.I. Ltd., authorising the said signatory to make a commitment on behalf of the company may please be sent and if a power of attorney had been issued in favour of the signatory, a certified copy of the same may also please be sent.

67. It is thus clear from this correspondence and the statements recorded at the hearing of this dispute that the Hindustan Zinc Ltd , is willing and prepared to pay on behalf of the M.C.I. Limited the quantum of bonus due to the workmen in employment for the year 1965-66 for the period from 1st April, 1965 to 22nd October, 1965 and also on its own behalf for the remaining period from 23rd October, 1965 to 31st March, 1966 provided it was satisfied that the admission for liability contained in the letter of 23rd May, 1965 signed by Shri A. C. Dutta, who is admittedly one of the Directors of the M.C.I. Ltd., had been properly and legally made It was stated before me at the last hearing of the dispute at Udaipur that there had been no reply to Hindustan Zinc Ltd. letter of 7th June from the M.C.I. Ltd., nor to the copy forwarded to its Commercial Director Shri P. M. Ismail. The Union on the other hand has argued that the liability of the M.C.I. Ltd., to pay bonus from 1st April, 1965 to 22nd October, 1965 under terms of the agreement dated 8th April, 1960 had been clearly admitted by Shri A C Dutt's letter of 23rd May, 1967 and that no further confirmation of this admitted liability was necessary. It has been critical of the intention underlying the said letter dated 7th May, 1965 written by Shri Bhandari to the M.C.I. Ltd.

68 Now, the position of the Hindustan Zinc Ltd., is that if the letter of 23rd May, 1967 was signed by Shri A. C. Dutta on behalf of the M.C.I. Ltd. as admission of that company's liability to pay bonus for 1965-66 at the agreed rates stated in the agreement of 8th April, 1960 read along with the agreement of 8th June, 1960 then this company would not only pay bonus on behalf of the M.C.I. Ltd. for the period from 1st April, 1965 to 22nd October, 1965 to the workmen then employed and realise the amount from the compensation payable to M.C.I. Ltd. in acquisition of the Zawar Mines, but also pay bonus at the same rate for the remaining period from 22nd October, 1965 to 31st March, 1966.

69. The difficulty appears to be that the correspondence has stopped where it has, and further clarification as sought by the Hindustan Zinc Ltd., in its letter of 7th June, 1967 has not been forthcoming from the M.C I. Ltd. The Union's position is that no further clarification is necessary. I am no at present deciding whether such further clarification is necessary or not. I, however, feel that in the fair determination of the demand for bonus under reference and in the interest of industrial peace I should call upon the M.C.I. Ltd., who though not a party is undoubtedly concerned in this dispute as far as the demand for bonus for 1965-66 is concerned to state whether under the letter of Shri A. C. Dutta dated 23rd May, 1967 it admits the liability for payment of bonus for the period from 1st April, 1965 to 22nd October, 1965 under terms of the agreement of 8th April, 1960 read with the agreement of 8th June, 1960 Under the provisions of sub-section 3A of section 10A of the Industrial Disputes Act, 1947, under which this reference has been made, I can give an opportunity to the M.C.I. Ltd., to present their case on his point. The company in this dispute has raised legal and technical objections to the payment of bonus for the year 1965-66 under the provisions of the Payment of Bonus Act, 1965, but its position still is that if the M.C.I. Ltd., accepts its liability to pay bonus for the period 1st April, 1965 upto 22nd October, 1965 in terms of the agreement of 8th April, 1960 read with the agreement of 8th June, 1960 it would pay the same and recover it from the M.C.I. Ltd., from the amount of compensation payable by

it and in addition it would pay bonus for the remaining period from 22nd October, 1965 to 31st March, 1966 at the same rate to the employees who were then in employment at the Zawar Mines. In the circumstances, I think that the fair thing to do would be to give an opportunity to the M.C.I. Ltd., to appear before me and state whether it had authorised Shri A. C. Dutta its Director to write the said letter dated 23rd May, 1967 and whether it accepts its liability for payment of bonus at the rate specified in the agreement of 8th April, 1960 read with the agreement of 8th June, 1960 for the period from 1st April, 1965 to 22nd October, 1965.

70. Notice will, therefore, be issued to the M.C.I. Ltd., to appear before me at the hearing of this dispute for the purpose stated above on the date and venue to be fixed later.

,Sd./- SALIM M. MERCHANT,
Arbitrator.

ANNEXURE A

THE METAL CORPORATION OF INDIA LTD.

Financial position for the years 1961-62 to 1964-65

Year	Paid up capital		Reserves & surplus	Borrowings	Current liabilities	Fixed Assets incl. Expansion assets	Current assets	Profit	% of profit on capital & reserves	Dividend Pref.	Ordy.
	Pref.	Ordy.									
1	2		3	4	5	6	7	8	9	10	
1961-62	7·00	173·85	14·17	57·42	21·62	194·88	173·88	2·48	1·25%	..	..
1962-63	7·00	239·25	16·67	164·64	42·04	342·55	125·63	4·11	1·50%	..	..
1963-64	7·00	239·60	22·43	519·65	94·53	753·38	129·42	5·70	2·10%	..	
1964-65	7·00	239·64	52·11	625·57	76·84	865·68	135·06	26·65	9·00%	..	..

EXHIBIT "A"

THE METAL CORPORATION OF INDIA LIMITED

DELHI OFFICE: B 19, Asaf Ali Road,

Registered Office
135, Biplabi Rash Behari
Basu Road,
(Formerly Canning Street)
3rd floor, Calcutta 1.

23rd May 1967.

In duplicate

Messrs. Hindustan Zinc Limited, 135 Biplabi Rash Behari Basu Road, Calcutta.

Dear Sirs:

Agreement dated 8th April 1960 between the Company and the Zawar Mines Mazdoor Sangh as clarified by Agreement dated 8th June 1960.

The Company entered into the above agreement and its amendment inter-alia dealing with Bonus payable to the workmen for financial years commencing from 1959-60 and terminating on 1965-66 (31st March 1966).

2. While the agreements were being implemented the Payment of Bonus Act, 1965 came into force from 29th May 1965.

3. In the Balance Sheet of the Company for the year ending 31st March 1965 issued on 17th August 1965 a 'note' was given which reads as follows:

"Bonus provided as per agreement with the Union subject to revision thereof in terms of Bonus Ordinance '65".

4. The Bonus for a particular year was to be paid within 30th September of the following financial year.

5. In respect of *ad-hoc* Bonus for the year 1964-65 payable by 30th September '65 the Company wrote to the Union intimating certain delay, due to unforeseen circumstances, in payment of same as per agreement and the Union accepted that position.

Before the payment of the said bonus could be made as per agreement the Undertaking of the Company was acquired by the Government as per Ordinance No. 6 of '65 Act No. 44 of '65 and Ordinance No. 10 of '66 and Act No. 36 of '66,, with effect from 22nd October '65.

7. The above understanding between the Company and its workmen conforms to Section 32(vii)(b) and/or Section 34(3) of the Payment of Bonus Act.

8. As such the Company is liable for payment of *ad-hoc* Bonus to its the then workmen as per the above agreement up to 22nd October '65 (the date on which the undertaking of the Company was acquired by the Government) although the agreements continue to have effect up to 31st March 1966.

This letter is being addressed to you without prejudice to the rights and contentions of the Company and its share-holders that the acquisition of undertaking of the Company in terms of Ordinance No 10 of '66 and/or Act No. 36 of '66 is *ultra vires*, illegal and is liable to be struck down and cancelled. This letter would not in any event be deemed to waiver of the rights of the Company and its share-holders to challenge the vires of the Ordinance and/or the Act is appropriate proceedings.

Yours faithfully,
For and on behalf of The Metal Corporation of India Ltd.
Sd/-
Director.

Copy to:
The General Secretary,
Zawar Mines Mazdoor Sangh,
Camp: Calcutta.

EXHIBIT "B"

No. 7(17): 66-ADM. 7th June 1967.

REGISTERED A/D.

The Metal Corporation of India Ltd., 135, Biplabi Rash Behari Basu Road, (3rd floor), Calcutta-1.

Dear Sirs,

SUB:—*Agreement dt., 8th April '60 between the CMI Ltd., and the Zawar Mines Mazdoor Sangh.*

Please refer to your letter No. Nil dated 23rd May 1967 addressed to our Calcutta Office and delivered to them on 30th May 1967 in regard to payment of bonus to the workmen of Zawar Mines for the period 1st April 1965 to 22nd October 1965. It has been stated in para 8 of the said letter that the Company is liable for payment of *ad-hoc* bonus to its the then workmen as per the agreement up to 22nd October 1965. It is not quite clear from the said letter whether the MCI Ltd., admits its liability to pay bonus to the workmen up to 22nd October 1965 under the long-term agreement dated 8th April 1960 read with the agreement dated 8th June 1960, or only an Opinion has been expressed about the liability of the company for payment of *ad-hoc* bonus. The amount of bonus payable under the agreement upto 22nd October 1965 covering workmen at Zawar Mines, Tundoo Smelter and Calcutta Office—would roughly work out to Rs. 2.50 lacs. We shall be greatful if you kindly let us know at your earlier whether MCI Ltd., accepts the liability for the above amount on account of *ad-hoc* bonus for the period 1st April 1965 to 22nd October 1965. In case the liability is accepted by you the payment of *ad-hoc* bonus would be made to the workmen for the above period on your behalf and account and the same provided in the books of accounts of MCI Ltd., as on 22nd October 1965. We would also like to have along with the above confirmation a certified copy of the Resolution of the Board of Directors of MCI Ltd , admitting the liability. In case your Board has delegated its powers in this behalf to any of its individual director or officer, the letter accepting the liability for payment of *ad-hoc* bonus may please be signed by that Director or officer and a certified copy of the power of attorney given to him by the Board may also please be sent to us.

You will kindly appreciate that we are requesting you for the above information for safeguarding our interest and to ensure that no dispute would arise in future with MCI Ltd., in this matter.

In this connection it is further stated that the dispute regarding payment of bonus for 1965-66 between the Union and the Management of the Undertaking is pending before the arbitrator. The Workmen had been claiming bonus under the long-term agreement dated 8th April 1960 whereas the Management's stand was that Bonus Act had superseded the long term agreement in so far as the Bonus Clauses are concerned.

Yours faithfully,
(Sd.) A. S. BHANDARI,
Financial Adviser and Chief Accounts Officer.

Copy to:
Mr. P. M. Ismail, ICS (Retd.)
Commercial Director,
Indian Steel and Wire Products Ltd.,
P.O. Indranagar,
Jamshedpur-8 (Bihar).

With a copy of letter dated [illegible] 6% from MCI Ltd. He may kindly enlighten us whether the signatory to the MCI Ltd. 's letter is competent to bind the Company for payment of bonus to the Workmen of Zawar Mines etc. for the period April 1965 to 22nd October 1965. In case it is so, the resolution of the Board of MCI Ltd. authorising the said signatory to make a commitment on behalf of the Company may please be sent to us. If a power of attorney has been issued in favour of the signatory a certified copy of the same may also please to sent.

Sd/-
A. S. BHANDARI,
Financial Adviser & Chief Accounts Officer, Hindustan Zinc Limited, Udaipur (Rajasthan).

[No. F. 36/18/67-LR.I.]

ORDERS

New Delhi, the 21st May 1968

S.O. 1932.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Motor Owners' Insurance Co. Ltd., Calcutta and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal No. 2, Dhanbad constituted under section 7A of the said Act.

SCHEDULE

Whether the demand of the General Insurance Employees' Association, Calcutta for the confirmation of the undermentioned two employees is justified? If so, to what relief are they entitled and from what date?

1. Shri Dilip Kumar Banerjee.
2. Miss Kanan Acharjee.

[No. 25/8/68/LRIII.]

New Delhi, the 24th May 1968

S.O. 1933.—Whereas the employers in relation to Kiriburu Iron Ore Mines of National Minerals Development Corporation Limited and their workmen represented by National Minerals Development Corporation Mines Workers' Union, Kiriburu have jointly applied to the Central Government under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), for reference to a Tribunal of an industrial dispute that exists between them in respect of the matter set forth in the said application and reproduced in the Schedule hereto annexed;

And whereas the Central Government is satisfied that the said National Mineral Development Corporation Mines Workers' Union represents the majority of the said workmen;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the workmen of Kiriburu Iron Ore Mine are entitled to the following facilities free of charge with effect from the 1st May, 1967:

(1) Housing accommodation,

(2) Supply of electricity,

(3) Transport to and from residences to place of work.

(4) Conservancy services.

If not, to what relief are the workmen entitled?

[No. 24/2/68-LRI.]

CORRIGENDUM

New Delhi, the 23rd May 1968

S.O. 1934.—In Schedule I to the Order of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) S O No. 4662, dated the 28th December 1967 published in the Gazette of India Extraordinary, Part II, Section 3, sub-section (ii), dated the 28th December, 1967,

for

13. M/s. Mitra S. K. (P) Ltd., Barbil.

14. Orissa Minerals Development Co. Ltd., Nalda, Barbil.

15. M|s. Mining and Transporting Co., Barbil.

read

13. Orissa Minerals Development Co. Ltd., Nalda, Barbil.

14. M/s. Mining and Transporting Co., Barbil.

[No. 37/22/67-LRI.]

O. P. TALWAR, Under Secy.

(Department of Labour and Employment)

New Delhi, the 21st May 1968

S.O. 1935.—In pursuance of proviso (a) to sub-regulation (1) of regulation 16 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following amendment in the notification of the Government of India in the Late Ministry of Labour and Employment No. S.O. 2793, dated the 23rd September, 1963, namely:—

In the Table appended to the said notification, after the heading 'U.S.A.' and the entries relating thereto, the following heading and entries shall be inserted, namely:—

"PORTUGAL REPUBLIC

1. Higher Technical Institute of the Technical University of Lisbon.	Degree in Mining Engineering."

[No. 17/3/68-M.I.]

S.O. 1936.—In pursuance of the proviso to regulation 17 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 2795 dated the 23rd September, 1963, namely:—

In the Table appended to the said notification, under the heading 'FOREIGN', after serial number 10 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

"11. Higher Technical Institute of the Technical University of Lisbon, (Portugal) Republic	Degree in Mining Engineering".

[No. 17/3/68-MI.]

S.O. 1937.—In pursuance of clause (b) of the proviso to sub-regulation (1), and clause (b) of the proviso to sub-regulation (2), of regulation 18 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation No. S.O. 1675 dated the 30th May, 1966, namely:—

In the Table appended to the said notification, after the heading "U.S.A." and the entries relating thereto, the following heading and entries shall be inserted, namely:—

"PORTUGAL REPUBLIC

I	II
1. Higher Technical Institute of the Technical University of Lisbon.	Degree in Mining Engineering."

[No. 17/3/68-MI.]

S.O. 1938.—In pursuance of clause (ii) of sub-regulation (1) of regulation 24 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 2796 dated the 23rd September, 1963, namely:—

In the Table appended to the said notification, under the heading "FOREIGN", after serial number 10 and the entries relating thereto, the following serial number and entries shall be inserted, namely:—

"11. Higher Technical Institute of the Technical University of Lisbon, Portugal Republic.	Degree in Mining Engineering."

[No. 17/3/68-M.I.]

S.O. 1939.—In pursuance of sub-clause (ii) of clause (a) of sub-regulation (1) of regulation 23 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following further amendment in the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 1455 dated the 17th May, 1963, namely:—

In the Table appended to the said notification, after the heading "U.S.A." and the entries relating thereto, the following heading and entries shall be inserted, namely:—

"PORTUGAL REPUBLIC

I	II
1. Higher Technical Institute of the Technical University of Lisbon.	Degree in Mining Engineering."

[No. 17/3/68-MI.]

New Delhi, the 25th May 1968

S.O. 1940.—In pursuance of the provisions of regulations 23 and 24 of the Metalliferous Mines Regulations, 1961, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment No. S.O 1119 dated the 6th April, 1963 (as amended by its notifications Nos. S.O. 2958 of 18th August, 1964, S.O. 252 of the 10th January, 1966 and S.O. 641 of the 14th February, 1967) notifying the date until which the Board of Mining Examinations may grant Manager's, Foreman's, Blaster's and Surveyor's Certificates referred to in the said regulations namely:—

In the said notification, for the words and figures "30th June, 1968" the words and figures "31st March, 1969" shall be substituted.

[Amendment No. (4) 1/10/68-M.I.]

VIDYA PRAKASH, Dy. Secy.

(Department of Labour & Employment)

New Delhi, the 21st May 1968

S.O. 1941.—In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948, (34 of 1948), the Central Government hereby exempts the Government Opium and Alkaloid Works, Ghazipur from all the provisions of the said Act except Chapter VA for the period up to and including the 30th June, 1968.

[No. F. 6(1)/68-HI.]

New Delhi, the 25th May 1968

S.O. 1942.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs Sen and Pandit Private Limited, I. P. Division, ADMAC Kalyani Industrial Estate, Block D, Shed 17 P.O. Kalyani (West Bengal) have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 31st December, 1967.

[No. 8/1/68-PF. II.]

DALJIT SINGH, Under Secy.

(Department of Labour & Employment)

New Delhi, the 25th May 1968

S.O. 1943.—In exercise of the powers conferred by sub-section (2) of section 26 of the Minimum Wages Act, 1948 (11 of 1948), the Central Government hereby directs that for a period of two years with effect from the date of publication of this notification, the provisions of sub-section (1) of section 13 and section 14 of the said Act, in so far as they relate to the regulation of weekly rest days and payment of overtime wages respectively shall not apply to the conservancy staff employed by the Cantonment Boards subject to the condition that weekly rest of the conservancy staff is so arranged that they get rest for two half days in a week to be notified to the staff concerned instead of one full day as at present. Whenever the conservancy staff are made to work on the half rest days in the week, they shall be paid overtime wages for the work done and granted in addition substituted half rest days for the rest foregone.

[No. F. LWI-I-8(2)1966.]

S. S. SAHASRANAMAN, Under Secy.

(Department of Labour and Employment)

ORDER

New Delhi, the 25th May 1968

S.O. 1944.—Whereas an industrial dispute exists between the Shipping Employers Federation, Visakhapatnam, and their workmen represented by Dock Workers Union, Visakhapatnam and Port Khalasis Union, Visakhapatnam;

And whereas the said employers and their workmen have by a written agreement under sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration and have forwarded to the Central Government, under sub-section (3) of section 10A of the said Act, a copy of the said arbitration agreement;

Now, therefore, in pursuance of sub-section (3) of section 10A of the said Act, the Central Government hereby publishes the said arbitration agreement which was received by it on the 8th May, 1968.

FORM C

(*See* Rule 7)

AGREEMENT

(Under Section 10A of the Industrial Disputes Act 1947)

BETWEEN

Names of Parties:

Representing employers.—Sri D. Ramamohana Rao, Honorary Secretary, Shipping Employers Federation, Main Road, Visakhapatnam-1.

Representing workmen.—(1) Shri B. C. M. A. Narsinga Rao, President, Dock Workers Union, Ganugulavari Street, Visakhapatnam-1. (2) Shri P. Manavallayya Naidu, President, Port Khalasis Union, Ramakrishna Street, Visakhapatnam-1.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri O. Maheepathi, Officer on Special Duty, Office of the Chief Labour Commissioner (Central), Shram Shakti Bhawan, Rafi Marg, New Delhi-1.

(1) *Specific matters in dispute*:

(a) Whether the demand of the Dock Workers Union, Ganugulavari Street, Visakhapatnam that some of the materials which are at present handled by the Iron & Steel Workers Pool should be handled by the manual handling workers is justified?

(b) If so, the materials and the types of work which should be handled by the manual handling workers?

(ii) *Details of parties to the dispute including the name and address of the establishment or undertaking involved*:

The Shipping Employers' Federation, Main Road, Visakhapatnam-1 and their workmen employed in the Iron & Steel handling in Visakhapatnam Port Trust.

(iii) *Name of the Union if any, representing the workmen in question:*

1. The Dock Workers Union (Independent), Ganugulavari Street, Visakhapatnam-1.

2. The Port Khalasis Union (INTUC) Ramakrishna Street, Visakhapatnam-1.

(iv) *Total number of workmen employed in the undertaking affected*:

About 2,500. (About two thousand and five hundred).

(v) *Established number of workmen affected or likely to be affected by the dispute*:

About 200. (About two hundred).

We further agree that the decision of the Arbitrator shall be binding on us.

The arbitrator shall make his award within a period of four months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to

arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Signature of Parties

1. Representing Employers:

(Sd.) D. RAMAMOHANARAO,
Hony. Secretary.
Shipping Employers PEDN
Visakhapatnam.

2. Representing workers:

Witnesses:

Sd/- Illegible
1. Steno to ACC(C) Vizag.

Sd/- Illegible
2. Cashier, ACC's Office, Vizag.

(Sd.) P. MANAVALLAYYA NAIDU,
President, P. K. Union, Visakhapatnam.
(Sd.) B. G. M. A. NARSINGA RAO,
President, D. W. Union, Visakhapatnam.

[No. 29/15/68-LRIII.]

C. RAMDAS, Under Secy.

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